FILE COPY

Supreme Court, U. S.
FILED
DEC 15 1934
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1934. No. 394

---

COMMONWEALTH OF PENNSYLVANIA,
*Petitioner.*

*v.*

JOHN G. WILLIAMS, JOSEPH B. SIMON, and CHARLES DENBY, JR., Receivers of MORTGAGE BUILDING AND LOAN ASSOCIATION

---

## BRIEF FOR PETITIONER

---

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

WM. A. SCHNADER,
*Attorney General.*

HAROLD D. SAYLOR,
*Deputy Attorney General.*

*Attorneys for Petitioner.*

State Capitol,
Harrisburg, Pa.

## INDEX


| | Page |
|---|---|
| OPINIONS BELOW | 1 |
| STATUTES INVOLVED | 2 |
| JURISDICTION | 2 |
| STATEMENT OF THE CASE | 3 |
| SPECIFICATION OF ERRORS | 8 |
| QUESTIONS PRESENTED | 9 |
| ARGUMENT | 10 |
| Summary | 10 |
| I. The District Court Did Not Have Jurisdiction to Appoint Receivers to Liquidate the Building and Loan Association | 12 |
| II. Even if Jurisdiction Existed It Was an Abuse of Discretion to Appoint Receivers in This Case | 20 |
| III. Even if the District Court Had Jurisdiction to Appoint Receivers, It Was Error to Deny the State's Application for Leave to Intervene and to Refuse to Order the Assets Turned Over to the State Secretary of Banking | 41 |
| IV. Cases Cited by the Courts Below | 51 |
| CONCLUSION | 55 |
| APPENDIX | 60 |


## TABLE OF CASES CITED


| | Page |
|---|---|
| Abbott, Com. of Banking, *v.* Morris, Judge, 132 S. E. 372 (S. C. A. W. Va. 1926) | 39 |
| Alexander *v.* Southern Home B. & L. Assn., 110 Fed. 267 C. C. N. D. Ga. 1900) | 54 |
| Amos, Comptroller of State of Florida *v.* Trust Company of Florida et al., 54 Fed. (2d) 286 (C. C. A. 5th Cir. 1931) | 32, 56, 57 |

PAGE

Bank of Bay Biscayne et al. *v.* Hankins et al., 42 Fed. (2d) 209, (C. C. A. 5th Cir. 1930) ..... 29, 30, 33, 56

Coltrane *v.* Baltimore B. & L. Assn., 110 Fed. 272 (C. C. Md. 1901) ..... 54

Cook *v.* Illinois Bankers' Life Assn., 46 F. (2d) 782 ..... 17, 56

Cooper *v.* Newton, 160 Fed. 190 (C. C. S. D. Ga. 1908) .. 54

Douglass *v.* Kavanaugh, 90 Fed. 373 (C. C. A. 6, 1898) .. 53

Flinn *v.* Interstate B. & L. Assn., 141 Fed. 672 (C. C. S. C. 1905) ..... 53

Galloway *v.* Mich. Savings & Loan Assn., 206 Fed. 241 (C. C. A. 6, 1913) ..... 54

Gordon, Secretary of Banking *v.* O'Brien, et al. ..... 55

Gordon, Secretary of Banking *v.* Ominsky et al., October Term 1934, No. 395 ..... 55

Gordon, Secretary of Banking *v.* Washington, et al. ..... 55

Green, Superintendent of Banks *v.* Smith et al., 129 So. 92 (S. Ct. Fla., 1930) ..... 40

Haynes *v.* Fraternal Aid Union, 34 F. (2d) 305 ..... 18

Korlby *v.* Springfield Inst. for Savings, 245 U. S. 330, 62 L. Ed. 326 ..... 37

Leadville Coal Co. *v.* McCreery, 141 U. S. 475 ..... 51, 53

Lee *v.* Edmunds, 66 F. (2d) 122 (1933) C. C. A., Fifth Circuit ..... 57

Lillard *v.* Lonergan, 72 F. (2d) 865 ..... 47, 48

Loring *v.* Marsh et al., Fed. Cas. No. 8515 (C. C., Dist. Mass., 1865) ..... 15

Lyon *v.* McKeefrey, 171 Fed. 384 (C. C. A. 3rd Cir. 1909) ..... 43, 55, 57

MacMurray *v.* Gosney, 106 Fed. 11 (C. C. W. D. Pa. 1901) 54

McGarry *v.* Lentz, 13 F. (2d) 51 (1926) C. C. A. Sixth Circuit ..... 16, 17, 56

Manorita *v.* Fidelity Trust & Loan Co., 101 Fed. 8 (C. C. S. D. Ala. 1900) ..... 54

PAGE

Miers *v.* Columbia Mutual B. & L. Assn., 157 Fed. 940 (C. C. S. D. N. Y. 1907) ..... 54

Miles *v.* New South B. & L Assn., 111 Fed. 946 (C. C. E. D. La. 1900) ..... 54

Mitchell *v.* Lay, 48 F. (2d) 79 (C. C. A., Ninth Circuit) .....31, 32, 47, 56, 57

Morrill *v.* American Reserve Bond Co., 151 Fed. 305 .... 51, 52

National Surety Co. *v.* State Bank, 120 Fed. 593 ..... 51

O'Neil *v.* Welch, 245 Fed. 261 (C. C. A. 3rd Cir. 1917) 44, 51, 55, 57

Port Newark Nat. Bank of Newark *v.* Waldron, 46 Fed. (2d) 296 (C. C. A. 3rd Cir. 1930) .....34, 35, 36, 37

Powers v. Blue Grass B. & L. Assn., 86 Fed. 705 (C. C. Ky. 1898) ..... 53

Relf *v.* Rundle, 103 U. S. 222 .....18, 19, 20

Shapiro *v.* Wilgus Et Al., Receivers, 287 U. S. 348, 77 L. Ed. 149 ..... 34

Sleeper *v.* Winkel, 122 Fed. 736 (C. C. E. D. Pa. 1903) .. 53

Solomons *v.* American B. & L Assn., 116 Fed. 676 (C. C. N. D. Ga. 1902) ..... 54

State of Florida ex rel. Dade County Security Co. *v.* Barns, 128 So. 860 (S. Ct. Fla., 1930) ..... 33, 40

State of Florida Ex Rel. Landis, Atty. Gen. *v.* Circuit For Eleventh Judicial Circuit Et Al., 135 So. 866 (S. Ct. Fla., 1931) ..... 33, 40

State of Florida Ex Rel. Porter Et Al. *v.* Atkinson, Circuit Judge, Et Al., 146 So. 581 (S. Ct. Fla., 1933) ..... 40

State of Missouri Ex Rel. Missouri State Life Ins. Co. *v.* Hall, Judge, Et Al., 52 S. W. (2d) 174 (S. Ct. Mo., 1932) ..... 40

State of Ohio Ex Rel. Bettman, Attorney General, *v.* Court of Common Pleas of Franklin County Et Al., 178 N. E. 258 (S. Ct. Ohio, 1931) ..... 22, 40

Towle *v.* Am. B. L. & Investment Co., 60 Fed. 131 (C. C. N. D. Ill., 1894) ..... 53

Ulmer *v.* Falmouth, 93 Me. 302, 45 A. 32 ..... 29

PAGE

Union Savings and Investment Co. *v.* District Court of Salt Lake County, 140 Pac. 221 (S. Ct. Utah, 1914) ..... 40

Universal Savings & Trust Co. *v.* Stoneburner, 113 Fed. 251 (C. C. A. 4, 1902) ..... 53

Wilson *v.* Parvin, 119 Fed. 652 (C. C. A. 6, 1903) ..... 53

---

## TEXT BOOKS AND COMMENTARIES

Fletcher's Cyclopedia of Corporations ..... 27

XIX Yale Law Journal 275 (1910) ..... 28

Street's Federal Equity Practice, Vol. 3, Section 2528 .... 30

---

## TABLE OF STATUTES CITED

Pennsylvania Act of March 3, 1911, c. 231, 36 Stat. 1091, 28 USCA Sec. 41 (1) ..... 2

Pennsylvania Act of May 21, 1919, P. L. 209 ..... 55

The Banking Act of 1923, Act of June 15, 1923, P. L. 809, as amended by the Act of May 5, 1927, P. L. 762, etc., 7 PS Sec. 1 Et Seq. ..... 2

Section 21 ..... 25

Section 22 ..... 42

Revised Statutes of the United States (12 USCA Section 191) ..... 35

Act of Congress (R. S. Sections 563, 629; 28 USCA Section 41, (1) ..... 13

Act of Congress of April 11, 1932, C. 38, 47 Stat. 47 ..... 12

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1934. No. 394

---

COMMONWEALTH OF PENNSYLVANIA,
*Petitioner,*

*v.*

JOHN G. WILLIAMS, JOSEPH B. SIMON, and CHARLES DENBY, JR., Receivers of MORTGAGE BUILDING AND LOAN ASSOCIATION,

---

## BRIEF FOR PETITIONER

---

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

---

This case comes before the Court on writ of certiorari issued to review a final decree of the Circuit Court of Appeals for the Third Circuit.

### OPINIONS BELOW.

The opinion of the District Court for the Eastern District of Pennsylvania, delivered by Judge Welsh on June 17, 1933, is reported in 4 F. Supp. 779.

The opinion of the Circuit Court of Appeals for the Third Circuit, delivered by Judge Davis on July 24, 1934, is reported in 72 F. (2d) 509.

## STATUTES INVOLVED.

The Federal statute involved in this proceeding and referred to in the courts below is Section 24 of the Judicial Code, as amended by the Act of March 3, 1911, c. 231, 36 Stat. 1091, 28 USCA Sec. 41 (1), and is as follows:

> "The district courts shall have original jurisdiction as follows:
>
> "First. Of all suits of a civil nature at common law or in equity * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3000, and * * * is between citizens of different states."

The Pennsylvania statute involved in this proceeding is "The Banking Act 1923", of June 15, 1923, P. L. 809, as amended by the Act of May 5, 1927, P. L. 762, the Act of May 28, 1931, P. L. 193, the Act of June 12, 1931, P. L. 563, and the Act of May 20, 1932, P. L. (Special Session) 7, 7 PS Sec. 1, et seq. The relevant portions of this act are printed in the Appendix to this brief, beginning at page 60.

## JURISDICTION.

The rules of this Court have been complied with.

A statement as to jurisdiction is a part of the brief in support of the petition for certiorari, which was printed and filed with this Court.

## STATEMENT OF THE CASE.

This is an appeal from the order of the Circuit Court of Appeals for the Third Circuit affirming a decree of the District Court for the Eastern District of Pennsylvania.

The decree of the district court denied the Commonwealth of Pennsylvania leave to intervene and refused an order directing receivers of Mortgage Building and Loan Association appointed by Judge Welsh of the district court to deliver over to the Secretary of Banking of the Commonwealth all assets and records of the association.

On appeal to the Circuit Court of Appeals for the Third Circuit that court on July 24, 1934 affirmed the decree of the District Court.

The appellant filed its petition for a writ of certiorari on September 21, 1934. Appellees filed an answer opposing the allowance of the writ. The writ was granted on October 22, 1934.

Mortgage Building and Loan Association was chartered by the Governor of Pennsylvania on April 7, 1931. It was a merger of seven former building and loan associations (R. 7, 9). Its assets aggregated three million dollars ($3,000,000).

All Pennsylvania building and loan associations transact business under the supervision of the State Department of Banking (R. 20).

Following an examination of the affairs of Mortgage Building and Loan Association by the Department of Banking, the Secretary of Banking summoned the officers and directors of the association to a hearing before the Attorney General of the Commonwealth. The hearing was held on June 5, 1931. The association was found to be in an unsafe and unsound condition, and was ordered by the Secretary of Banking thereafter to conduct its affairs in a prescribed manner and on a restricted basis in order to safeguard the interests of its creditors and shareholders (R. 20, 21).

The association complied with the order of the Secretary of Banking. Its officers kept in communication with him and reported to him from time to time the condition of the association (R. 22).

On or about October 28, 1932, the Secretary of Banking instructed the association's officers to prepare and submit to him a statement of its condition (R. 22).

On December 6, 1932, upon submission of this statement, it became evident that the association was insolvent. Thereupon a further hearing was held by the Secretary of Banking at which the association's officers were instructed to liquidate the association, (R. 22). They were ordered specifically to:

1. Accept no more dues on account of shares of stock:

2. Return segregated dues to stockholders immediately:

3. Credit payments by the borrowers on account of the principal of the obligations, after deducting legal interest; and

4. Pay withdrawals pro rata to all stockholders after payment of preferred claims.

On February 8, 1933, three of defendant's officers called upon the Secretary of Banking and informed him that in their opinion the best interests of the creditors and shareholders of the association would be subserved if he were to take it into possession. These officers were Joseph H. Sundheim, Esquire, Solicitor, John G. Williams, Real Estate Officer, and Alfred B. Post, Secretary. They sought assurances from the Secretary of Banking that he would employ them in certain capacities to liquidate the affairs of the association after taking it into possession. The Secretary refused to give such assurances, but advised the officers that he would act promptly after consultation with the Attorney General (R. 23).

On February 9, 1933, complainant in this proceeding, a shareholder resident in New York, filed his bill in equity (R. 7). The bill prayed for the appointment of receivers to "liquidate the business and property and assets of defendant [the association] in such manner as they may deem necessary or proper" (R. 13). Thereupon, without notice of any kind to the association's other shareholders or to its creditors or to the Commonwealth or its Department of Banking, Judge Welsh, of the district court, appointed John G. Williams and Joseph B. Simon temporary receivers.

Mr. Williams had been real estate officer of the association (R. 23, 24).

On February 10, 1933, H. H. Eshbach, Chief of the Building and Loan Bureau of the Department of Banking, and Deputy Attorney General Harold D. Saylor of the Commonwealth of Pennsylvania, having read in the Philadelphia newspapers of the court's action, attended a meeting in Judge Welsh's chambers, at which the temporary receivers, their counsel, and officers of the association were present. In the name of the Commonwealth, its representatives requested the court not to make permanent the appointment of receivers, but to permit the Secretary of Banking to take possession of the association, and to liquidate its affairs as contemplated by Pennsylvania law (R. 23, 24).

The court did not accede to this request.

The association's officers thereupon filed a consent answer which had been authorized at a meeting of the directors held the previous evening (R. 15-16). Forthwith the court made permanent the appointment of receivers for the association. The decree of the court empowers the receivers to do all things necessary to effect the liquidation of the association (R. 16).

On February 14, 1933, pursuant to the provisions of Pennsylvania law, the Secretary of Banking summoned the association's officers and directors to, and gave the receivers notice of, a hearing to show cause why possession should not be taken of the association's business and property because it was insolvent,

in an unsafe and unsound condition, and in the hands of receivers. At the hearing, which the receivers did not attend, the officers and directors admitted that the association was insolvent, in an unsafe and unsound condition, and in the hands of receivers. Thereupon the Attorney General gave to the Secretary of Banking his approval and consent to take possesssion of the association's business and property (R. 25).

On February 17, 1933, the Secretary of Banking filed a formal certificate in his office at Harrisburg, taking legal possession of the association; and on the same day he filed a certified copy of the certificate with Court of Common Pleas No. 5, Philadelphia County, as of December Term, 1932, No. 12603 (R. 25).

On February 20, 1933, the district court appointed Charles Denby, Jr., as a third receiver (R. 19).

On March 1, 1933, in accordance with Pennsylvania law, the Secretary of Banking made formal demand upon the receivers to deliver over to him as their successor, all books, papers, and property of defendant association. The receivers refused to do so (R. 25, 26).

On or about March 17, 1933, the Commonwealth of Pennsylvania filed its petition with the district court asking for leave to intervene in the equity proceedings and for an order on the receivers to surrender the association's assets to the Secretary of Banking (R. 20). The receivers filed an answer to this petition (R. 55).

On May 8, 1933, argument on petition and answer was heard by Judge Welsh who on or about June 17, 1933, filed his opinion, holding that the Commonwealth's petition must be dismissed (R. 44). On June 23, 1933, the court entered its decree dismissing the petition (R. 58).

## SPECIFICATION OF ERRORS.

1. The Circuit Court of Appeals for the Third Circuit erred in that it affirmed the decree of the District Court for the Eastern District of Pennsylvania, depriving the Commonwealth of Pennsylvania of the right to intervene as a party to the proceeding entitled "EDWIN B. ELSON v. MORTGAGE BUILDING AND LOAN ASSOCIATION, No. 7535, December Term 1932," and refusing to direct John G. Williams, Joseph B. Simon and Charles Denby, Jr., Receivers of Mortgage Building and Loan Association, to deliver over to the Secretary of Banking of the Commonwealth all assets and records of Mortgage Building and Loan Association.

2. The Circuit Court of Appeals for the Third Circuit erred in entering the following order on July 24, 1934:

> "This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.
>
> "On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of June 23, 1933, of the said District Court in this cause be, and the same is hereby affirmed, with costs." (R. 80).

## QUESTIONS PRESENTED.

1. Has a Federal court jurisdiction on a shareholder's bill to appoint receivers to liquidate a quasi-public corporation,—a building and loan association,—when the State law provides a complete system for the organization, regulation, supervision and liquidation of such corporations, and does not permit a shareholder to maintain a suit in the State courts for the appointment of any person as receiver to liquidate their affairs, other than the State administrative official who supervises and regulates such corporations?

2. If a Federal court has such jurisdiction, was the appointment of permanent receivers upon a consent answer in this case an abuse of discretion?

3. Has a sovereign state such an interest in such a receivership proceeding in a Federal court as to entitle it to intervene as a party?

## ARGUMENT.

### Summary

A member or shareholder of a quasi-public corporation,—a bank, an insurance company, or a building and loan association,—is bound by the provisions of the State law governing the organization, regulation, supervision and liquidation of such corporation.

If the State law provides for liquidation exclusively through the State supervisory official, the member or shareholder must be regarded in law as having accepted that provision as a part of his contract.

Under such circumstances the member or stockholder has no standing to maintain a bill in equity in a Federal court praying the appointment of receivers to liquidate the corporation. He cannot have a controversy with the corporation on this subject; and even though he be a citizen of another state, there is no controversy between citizens of different states.

Diversity of citizenship is not of itself a controversy; and unless there is a controversy, diversity of citizenship does not confer jurisdiction on the Federal courts.

But even if jurisdiction exists, the court should have refused the appointment of receivers in this case because

1. The consent answer by the officers of the association, under the facts here presented, indicated a collusive effort to defeat the State policy of having building and loan associations liquidated exclusively by the Secretary of Banking;

2. Prior to the filing of the bill, the State Secretary of Banking had taken charge of the affairs of this association and had placed its operations on a restricted and liquidating basis, pending his determination of the queston whether he himself should liquidate its affairs;

3. There was no charge of fraud, mismanagement or improper conduct of any kind on the part of the Secretary of Banking in supervising this association; and

4. The Federal courts, as a matter of comity, should not lend themselves to the subversion of a State's policy in the management and liquidation of quasi-public corporations upon the mere assertion of diversity of citizenship and the necessity for liquidation.

And even if the court did not abuse its discretion in appointing receivers, the Commonwealth should have been permitted to intervene and the Court should have ordered the assets turned over to the Secretary of Banking. To this extent, at the very least, the Federal courts should sustain a State's policy in assuring stockholders of its quasi-public corporations, that liquidation, if it becomes necessary, will be in charge of the State's administrative officer charged with the

duty of supervising, regulating, and liquidating such corporations.

## I.

## The District Court Did Not Have Jurisdiction to Appoint Receivers to Liquidate the Building and Loan Association.

Congress has given expression to the policy that stockholders and creditors of building and loan associations shall not be subjected to the liquidation of their affairs by Federal courts at the instance of disgruntled stockholders.

Quasi-public corporations, such as insurance companies, banks, trust companies, and building and loan associations, are not subject to the bankruptcy laws (Act of April 11, 1932, c. 38, 47 Stat. 47). A district court cannot appoint receivers in bankruptcy for a building and loan association and thereafter wind up its affairs. We submit that a district court may not effect the same result by means of an equity receivership proceeding.

The proceedings here instituted by bill in equity are tantamount to bankruptcy proceedings. The bill alleged and the defendant admitted insolvency. The prayer of the bill is that the receivers liquidate the association.

This is not a receivership instituted for the purpose of continuing the business. It is not a "nursing receivership." It is in effect a bankruptcy proceeding.

In his bill, the complainant asked for the appointment of receivers to "liquidate the business and property and assets of defendant" (R. 13).

There is no legislative authority in a district court to appoint a receiver to liquidate a quasi-public corporation of Pennsylvania.

The Act of Congress (R. S. Sections 563, 629; 28 USCA Section 41, (1) ) provides that:

> "The district courts shall have original jurisdiction as follows:
>
> "First. Of all suits of a civil nature, at common law or in equity, * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3000, and * * * is between citizens of different States * * *."

Under the system established by Pennsylvania law there cannot be a justiciable controversy between a shareholder and a bank or building and loan association involving the appointment of receivers to liquidate the institution. A citizen of Pennsylvania cannot by bill in equity in a Pennsylvania court secure the appointment of receivers to liquidate a Pennsylvania bank or building and loan association. If such a bill were filed only the Secretary could be made receiver. (Sec. 22 of the Act of 1923). There would be no justiciable controversy to support a bill seeking the appointment of any other person.

Therefore, if the district courts of the United States have jurisdiction in cases such as that now before the

court, a citizen of another state would have rights superior to those of citizens of Pennsylvania.

Diversity of citizenship must, in such event, be held to **create** a controversy, which, but for diversity of citizenship, could not exist.

To state the matter differently, the court would not be taking jurisdiction of controversies between citizens of different states but would be creating controversies between such citizens.

For the purposes of this case, it is not necessary to determine whether receivers can ever be appointed for banks or building and loan associations. Admitting for the sake of the argument, that allegations of fraud or mismanagement or maladministration might warrant the appointment of receivers, nevertheless receivers cannot be appointed for such institutions for the express purpose of liquidating them.

Under the law of Pennsylvania, if receivers are appointed for any reason, the Secretary of Banking may take possession of the institution **because receivers have been appointed.**

And the law expressly requires that upon taking possession, the Secretary of Banking "shall supersede any receiver previously appointed by any court."

In addition to the requirement that there be a controversy, the Judicial Code, as quoted above, confers jurisdiction only over suits "of a civil nature, at com-

mon law or in equity." This provision has been construed as conferring jurisdiction in equity only where it can be supported by the principles of the High Court of Chancery in England existing at the time of the adoption of our Constitution.

In LORING v. MARSH et al., Fed. Cas. No. 8515 (C. C., Dist. Mass., 1865) Judge Clifford said, at 15 Fed. Cas. 905, 914:

> "* * * The courts of the United States cannot exercise any equity powers, except such as are conferred by an act of congress, and those judicial powers which the high court of chancery in England under its judicial capacity, as a court of equity, possessed and exercised at the time of the formation of the constitution of the United States. * * * The supreme court hold that the prerogative power belonging to the sovereign, has not been delegated to the federal government, but remains in the several states, and is to be exercised according to the laws and usages prevailing in the several states * * *"

We have been unable to find any case in which the High Court of Chancery assumed jurisdiction to liquidate a quasi-public corporation.

That being the case, the section of the Judicial Code to which we have referred cannot be construed as conferring upon district courts jurisdiction in equity to liquidate quasi-public corporations and especially quasi-public corporations of sovereignties other than the United States Government. And there is no other Federal statute which could be construed to effect that result.

It is, of course, true that state legislation cannot limit or control the jurisdiction of the Federal courts in cases in which they have heretofore been accustomed to exercise jurisdiction. But state laws may in effect bar an individual from resort to a Federal court by denying him a right of action against a quasi-public institution of which he is a member or shareholder. The Federal courts have recognized this distinction.

In McGarry v. Lentz, 13 F. (2d) 51 (1926), the Circuit Court of Appeals for the Sixth Circuit affirmed the District Court in its refusal to appoint receivers for an Ohio fraternal benefit society on application of several of its members. The Ohio General Code contemplated the complete regulation of domestic fraternal benefit societies and insurance companies by state officers. The court held that this precluded any member of a society organized under such laws from resorting to a Federal court for relief not contemplated by the state statute. Judge Hickenlooper said, at page 52:

> "* * * Obviously, no state Legislature can regulate, limit, or control the jurisdiction of the federal courts, nor can the laws of any state preclude resort to the federal courts, nor confer exclusive jurisdiction upon a designated state court, in a class of cases of which the federal courts of equity have theretofore been accustomed to assume jurisdiction. * * *"

But at page 53:

> "* * * While the question is sometimes loosely referred to as one involving the jurisdiction of the court over the subject-matter of the litigation, the

purpose, scope, and effect of section 9487 of the General Code of Ohio, and similar provisions in other states, are those of the limitation of the rights of members and policy holders, rather than a restriction upon the jurisdiction of courts of equity.

"In the present case the very contract, which created whatever rights the complainants may have, limited and defined those rights, so as to exclude the remedy now asserted. The question, therefore, is not whether the complainants are by statute precluded from asserting in this court a right given them by law, but rather whether the right was ever existent. The complainants have no rights here which do not originate under and are not founded upon their contracts of membership and policies of insurance in the American Insurance Union. * * *"

Likewise, in COOK v. ILLINOIS BANKERS' LIFE ASS'N, 46 F. (2d) 782 (1931), the Circuit Court of Appeals for the Second Circuit upheld the District Court in dismissing a bill of complaint brought by five policyholders of an Illinois life insurance company on the ground that the complainants were without right under state law to maintain an action for an injunction and for the appointment of a receiver. The court held, citing MCGARRY v. LENTZ and other cases, that the laws of Illinois regulating its insurance companies "are a part of the charter of both the association and the company, and their enforcement is a property right of every member of the association and a charter right of the association. * * *. These provisions are valid limitations and safeguards, binding upon the corpora-

tion and its members, and will be enforced by the federal courts," (page 783).

See also HAYNES v. FRATERNAL AID UNION, 34 F. (2d) 305 (1929), where a similar statute was held by the District Court for Kansas to deny a member of a Kansas fraternal society the right to resort to a Federal court for an injunction or a receiver. By becoming members of the society the complainants "contracted away their rights" to such remedies.

RELF v. RUNDLE, 103 U. S. 222 (1881), has long been authority for the proposition that where an insurance company is dissolved under the laws of the state of its creation, the supervising official of the state becomes vested with all of its property and is actually the successor to the corporation itself.

The reasoning of the Court in that case is significant in the instant case. In holding that Relf, the Superintendent of the Insurance Department of Missouri, had a right to bring a suit in the courts of another state for the recovery of property belonging to the company, Mr. Chief Justice Waite said (page 225):

> "After the decree of dissolution the Life Association Company had no longer any corporate existence, and the temporary agency and receivership of Frost was ended when the property of the Corporation was transferred to Relf and he became under the law entitled to the possession.
>
> "Relf is not an officer of the Missouri state court, but the person designated by law to take the property of any dissolved life insurance cor-

poration of that State, and hold and dispose of it in trust for the use and benefit of creditors, and other parties interested. **The law which clothed him with this trust was, in legal effect, part of the charter of the Corporation.** He was the statutory successor of the Corporation for the purpose of winding up its affairs. * * * He is an officer of the State, and as such represents the State in its sovereignty while performing its public duties connected with the winding up of the affairs of one of its insolvent and dissolved corporations. His authority does not come from the decree of the court, but from the statute. He appeared in Louisiana not by virtue of any appointment from the court, but as the statutory successor of a corporation which the court had in a legitimate way dissolved and put out of existence. He was in fact, the Corporation itself for all the purposes of winding up its affairs.

"We are aware that, except by virtue of some statutory authority, an administrator appointed in one State cannot generally sue in another, and, that a receiver appointed by a state court has no extra-territorial power, but a corporation is the creature of legislation, and may be endowed with such powers as its creator sees fit to give. * * * Every corporation necessarily carries its charter wherever it goes, for that is the law of its existence. It may be restricted in the use of some of its powers while doing business away from its corporate home, but every person who deals with it everywhere is bound to take notice of the provisions which have been made in its charter for the management and control of its affairs both in life and after dissolution.

> "By the charter of this Corporation, if a dissolution was decreed, its property passed by operation of law to the Superintendent of the Insurance Department of the State, and he was charged with the duty of winding up its affairs. **Every policy holder and creditor in Louisiana is charged with notice of this charter right which all interested in the affairs of the Corporation can insist shall be regarded.** * * *"

In the present case it is the Commonwealth's contention that the complainant in the district court, a stockholder of Mortgage Building and Loan Association, whether or not he resided beyond the confines of the Commonwealth, is bound by the laws under which the association of which he is a member was created and regulated. By the provisions of those laws the association could be liquidated only by the Secretary of Banking. The effect of the provision designating the Secretary as successor to a receiver appointed by any court was to preclude the complainant from resorting to the district court for the appointment of a receiver to liquidate the affairs of the building and loan association.

There was no justiciable controversy brought to the District Court by the bill in equity filed there.

## II.

## Even if Jurisdiction Existed It Was An Abuse of Discretion to Appoint Receivers In This Case.

A reading of the portions of The Banking Act of 1923, quoted at pages 25 and 42 and printed in the Appendix to this brief, renders it apparent that the

Commonwealth of Pennsylvania has provided a complete system for the incorporation, supervision, and liquidation of building and loan associations.

Under Section 21 the Secretary of Banking, under certain conditions, may take possession of the business and property of a building and loan association. Subsequent sections prescribe his powers and duties after he has taken possession.

In this case, although the Secretary of Banking had not actually taken possession of the building and loan association prior to the filing of the bill of complaint, he had taken the steps described in our Statement of the Case, to safeguard the assets of the association, and to protect its stockholders and creditors. Section 20 of The Banking Act of 1923 gave him full authority to take these steps.

Beginning on June 5, 1931, when the Secretary found the association to be in an unsafe and unsound condition and continuing thereafter until the bill in equity was filed in these proceedings, he never ceased to exercise control over the association as authorized by Pennsylvania law. His orders compelled a specific course of action.

The association's officers acknowledged the propriety of the restrictions imposed by the Secretary of Banking. They recognized his authority and conducted the association's business accordingly. What they did was binding upon the shareholders.

There is no charge in the bill of complaint that the Secretary of Banking, in permitting the association to operate on a restricted basis, even after it was found to be insolvent, was guilty of neglect or delay in performing his duty. What was being done benefited all stockholders and creditors. Rather than take possession of the association and liquidate it, as the law permitted him to do, the Secretary elected to permit the association to operate upon a restricted basis, until such time as he determined that the best interests of the stockholders and creditors would be served by his taking possession of the association and liquidating it. During this time the association was being slowly liquidated at a minimum of expense and without wastage of assets. But it was always under the supervision and control and subject to the directions of the Secretary.

Under these circumstances, we submit that the district court should not have entertained a shareholder's bill designed to unseat the state officer. The court should have sustained Pennsylvania's statutory method of liquidation.

In STATE OF OHIO EX REL. BETTMAN, ATTORNEY GENERAL, v. COURT OF COMMON PLEAS OF FRANKLIN COUNTY ET AL., 178 N. E. 258 (1931), the Supreme Court of Ohio restrained by prohibition the appointment by an inferior court of a receiver for a building and loan association. The complainant, a creditor, alleged that the association was insolvent and requested the appointment of a receiver. The Attorney General of the State alleged that for some time prior to the suit the Superintendent of Building and Loan Associations of

Ohio had been examining the association to ascertain its true condition and determine the course to be pursued by him under the law, and that the sole purpose of the complainant and her counsel in filing the bill was to deprive the superintendent of jurisdiction and procure the liquidation of the association by receivers.

The Supreme Court held that the court of common pleas had no authority to appoint a receiver and that the statutory method of dissolution and liquidation of building and loan associations was adequate, complete, and exclusive. The language of Matthias, J., at page 261, is particularly pertinent in this case. He said:

> "These facts are uncontroverted, and there being no charge of failure, neglect, or delay of the superintendent of building and loan associations, or of the attorney general, in the performance of their duties prescribed by law, the presumption, of course, obtains that they have been and will continue to be diligent in the performance of all the duties, and faithful in meeting all the responsibilities of their respective offices relative to the affairs of said company."

In the present case, the Secretary of Banking, having a complete knowledge of conditions obtaining in the building and loan association field because of his close contact with and supervision over the thousands of such associations in Pennsylvania, was the proper person, in fact and in law, to determine what was for the best interests of the association and its members.

In order to protect the stockholders and creditors of building and loan associations and to prevent a col-

lapse of the entire field, the Secretary of Banking in the case of hundreds of other associations, had followed the procedure he had taken in the present instance.

While acting faithfully according to the law of Pennsylvania, the Secretary was challenged to take possession of the Mortgage Building and Loan Association and appoint its officers his agents for liquidation, or lose control of it to a Federal receiver. Upon the Secretary's refusal to surrender to this improper demand, the bill was filed forthwith.

The haste of the court below was so great that the Secretary could not take possession before permanent receivers were appointed.

The receivers' counsel argued below that the Commonwealth did not exercise diligence and did not promptly take possession of the association, although it had power so to do immediately. That is not true.

Until the threat of a Federal receivership was made, there was no occasion for the Secretary of Banking to take possession of the defendant association. He believed that he was best serving the stockholders and creditors by permitting it to follow the course which he ordered.

When the threat was made, a hearing, after notice, and the Attorney General's consent to take possession, were necessary preliminaries to the taking of possession.

Section 21 of The Banking Act, as amended, provides that the Secretary may take possession of an association if found to be in an unsafe or unsound condition or in the hands of a receiver, etc., "after hearing had upon notice given, with the approval and consent of the Attorney General".

Counsel for the receivers, arguing that the Department of Banking could have taken possession the day before the Federal receivers were appointed, referred in the courts below to the phraseology of paragraph III, of Section 21 of the Banking Act, which reads:

> "Is in an unsafe or unsound condition to continue business: Provided, in such case, That the Secretary may forthwith, without such hearing and consent of the Attorney General, take possession of the business and property **of any such corporation or person receiving moneys on deposit,** when and if, in his opinion the protection of depositors and the public requires such peremptory action".

Obviously a building and loan association is not a corporation receiving moneys on deposit. The peremptory action authorized by paragraph III can be taken only in the case of a bank or trust company, and not in the case of a building and loan association.

The Commonwealth and its Department of Banking were helpless to prevent the nonresident stockholder from presenting his bill in equity to the court below; but that court could reasonably have required notice to be given to the Secretary of Banking before taking final action. Surely a sovereign state and its depart-

ments of government are entitled to that consideration in the courts of the United States.

The District Court, in its opinion, stated that the action of the Secretary taken in 1931, which placed the association on a restricted basis, was, at most, a mere admonition and "did not even rise to the dignity of a restraining order". The court then says that even had it reached such dignity, the Secretary's action was not equivalent to the commencement of an action for the appointment of a receiver.

The Commonwealth does not contend that it was. The Commonwealth does contend that in view of the situation existing when the bill was filed,—and it must have been apparent to the court as it is evident from a reading of the bill,—the court should not have acted as it did.

The question is: Should a Federal court even if it has jurisdiction, ignore the public policy of a state merely because there is a diversity of citizenship and the sum of three thousand dollars ($3,000) is involved?

There is abundant support for a negative answer.

The complainant asked the court to appoint receivers to liquidate his association. The court acted instantly, conceiving it to be its duty to do so, irrespective of the fact that thousands of other shareholders as well as the State Department of Banking knew nothing of the application.

In so doing the court abused its power.

The possession of jurisdiction is not the same thing as its exercise.

As Section 7669 of Fletcher's Cyclopedia of Corporations expresses it:

> "The distinction between 'jurisdiction' to appoint a receiver and whether the power, if it exists, shall be exercised, must always be kept in mind. Jurisdiction of a court of equity to appoint a receiver is one thing, and whether the court will exercise its jurisdiction is an entirely different matter. While courts hesitate to appoint a receiver, especially when the corporation is solvent, this does not mean that there is want of jurisdiction to appoint a receiver, it being well said that 'judicial hesitancy does not mean judicial atrophy or paralysis.'"

And, again in Section 7697:

> "* * * The power of appointment [of receivers] is a delicate one, and to be exercised with great circumspection. Indeed, the courts have held repeatedly that **the power to appoint a receiver should be exercised with great care and the utmost caution and only in case of an emergency** * * * or * * * 'extreme necessity,' * * * and more especially is this true where the corporation is solvent, or the defendant corporation is a bank. * * * 'A receivership is not a panacea for all business ills. The remedy may be worse than the disease. * * * 'A receivership is the most drastic remedy and the most expensive luxury known to the realm of the law.' * * *" Citing Furrer v. Nebraska Building and Investment Company, 189 N. W. 359 [Neb.]

This language applies with particular force to building and loan associations. This is especially so in view of the fact that the legislatures of many states have enacted laws giving to statutory officers rather than to the courts, the duty to liquidate these associations. The legislatures evidently had in mind the avoidance of the well-known abuses which have become so costly to creditors and stockholders in receiverships of ordinary corporations.

In his Article on "THE ABUSES OF RECEIVERSHIPS," in XIX Yale Law Journal 275 (1910), Judge Jacob Trieber of the United States District Court in Arkansas, said:

> "The appointment of a receiver and the granting of a temporary injunction, like the granting of specific performance of contracts, is not a matter of absolute right, but is within the sound discretion of the court, guided by the established principles, rules and practices in equity. One of the well established rules is that courts of equity will not grant any interlocutory relief if the injury caused the defendants by reason thereof will prove very great, while the benefits to the party applying therefor will be but small compared with the injury inflicted upon the defendant. Still, in spite of these well settled equitable principles, it is not unusual for appointments of receivers to be made upon the most flimsy allegations, and sometimes even without notice to the parties directly affected thereby. * * *"

Experience shows this to be true.

There is a real and extensive public interest involved in the state supervision and regulation of banks

and building and loan associations. Judges should hesitate a long while before applying to such institutions the extraordinary remedy of receivership.

In ULMER v. FALMOUTH, 93 Me. 302, 45 A. 32 (1899), the Supreme Court of Maine said (page 34):

> "'It is to be observed that these institutions possess a public character, and it is for the interest of the public, not only that they shall be subjected to judicial investigation when they ought to be, but also that they shall not be so subjected when they ought not to be. Unusual means are placed in the hands of the bank examiner to ascertain their condition, and it cannot be presumed that he will fail to act in a proper case. If one shareholder may maintain a bill, so may every other. There is no limit. To subject loan and building associations to vexatious, harassing and expensive litigation caused by the suits of possibly multitudinous shareholders who may be dissatisfied, with or without reason, would greatly impair their usefulness, if not imperil their existence.'"

The courts should not exercise their power to appoint receivers where the consequences will not be helpful to the parties most interested and will be fatal to the corporation itself.

In BANK OF BAY BISCAYNE ET AL., v. HANKINS ET AL., 42 Fed. (2d) 209, (C. C. A. 5th Cir. 1930), the District Court appointed a receiver to control the assets of an insolvent state bank, in place of the state comptroller of Florida acting under statutory authority. The appellate court reversed the district court's action. It

remanded the case, with directions to dismiss the bill of complaint, "The mandate to issue immediately."

The court said, at page 210:

> Regardless of the terms used, it is apparent that the order in effect appoints a receiver to control the assets of the failed bank, and enjoins the comptroller from carrying on the liquidation of the institution under provisions of the laws of Florida. **A bank organized under the laws of a state is a quasi-public institution, and, whenever the laws of the state provide for supervision and control of the affairs of the bank by an authorized official, and also for the ultimate liquidation and distribution of its assets under his direction, in the event of its insolvency, it is a matter of grave consequence for any court to interfere,** and that should be done only in a perfectly clear case. It does not appear from the record that such a case is presented here. The laws of Florida provide an orderly method of liquidating the affairs of an insolvent state bank, in substantially the same manner that federal statutes provide for the liquidation of an insolvent national bank. * * * It is usually a matter of discretion to issue an injunction and appoint a receiver, but the exercise of jurisdiction and the entering of the order appealed from in this case appear to us to be unwarranted."

In STREET'S FEDERAL EQUITY PRACTICE, Vol. 3, Section 2528, it is said:

> "* * * the right of a federal court to appoint a receiver may sometimes be materially affected by state statutes. For instance, if a state statute creates a subtantive right inconsistent with the right to have a receiver appointed, a federal court

will not appoint a receiver, though upon the general principles governing its own practice a receiver would be appointed."

Not only does the Pennsylvania statute negative the liquidation of building and loan associations through a receivership but it also creates a positive right on the part of shareholders to have the Secretary of Banking substituted if a receiver is appointed. This right should, we submit, be recognized by the Federal courts.

And the right conferred by the Pennsylvania law is not merely for the benefit of the members of the particular association. It is intended to benefit the people of the Commonwealth generally. It is a matter of real public importance that the affairs of building and loan associations, banks and trust companies be liquidated,—when liquidation becomes necessary,—in an orderly and economical manner. And those who deal with such corporations have a right to rely upon the sanctity of the law creating and regulating them.

In MITCHELL v. LAY ET AL., 48 Fed. (2d) 79 (1931), it was held that the Insurance Commissioner of California could not be ordered by a Federal court to deliver over to its receiver funds placed in the custody of the state for the protection of the insolvent insurance company's creditors therein. The District Court judge had issued such an order, but on appeal he was reversed.

Judge Wilbur said at page 84:

"It will be observed that this injunction pro-

> hibits the insurance commissioner from performing the duties imposed upon him by a state statute * * * which provide for the liquidation of insolvent insurance companies which have been engaged in business in the state of California. The constitutionality of this state statute is not disputed. The order appealed from directs that the appellant insurance commissioner violate his official duty under such statute by turning over to the receiver of the federal court a fund that was in the custody of the state through its officers for the protection of creditors of the insolvent insurance company before this action was begun. And these orders are made notwithstanding that there is no claim that the insurance commissioner has neglected his duty, but solely on the ground that he is endeavoring to perform his duty as defined in the state statute. The mere statement of this situation is sufficient to show the impropriety of the order of the court. * * *"

A petition for writ of certiorari to the Supreme Court of the United States was denied. (283 U. S. 864, 75 L. Ed. 1469 [1931]).

In Amos, Comptroller of State of Florida v. Trust Company of Florida et al., 54 Fed. (2d) 286 (C. C. A. 5th Cir. 1931), the District Court attempted to take over a large part of a trust company's assets by a special receivership. It enjoined the state comptroller from exercising the functions imposed upon him by state law. The appellate court held such action by a District Court improper and unwarranted. The state administrative officer was compared to a liquidator appointed under the national banking act and was

held to be not a court officer, but a representative of the state.

In his decision, Circuit Judge Sibley followed the decisions of the Florida courts in STATE OF FLORIDA EX REL. DADE COUNTY SECURITY CO. v. BARNS, 128 So. 860 (1930); BANK OF BAY BISCAYNE v. HANKINS, supra; and STATE OF FLORIDA v. CIRCUIT COURT, 135 So. 866 (1931).

A petition for a writ of certiorari was denied by this Court (285 U. S. 559, 76 L. Ed. 947 [1932]).

This Court appears to have set its seal of approval on the policy of non-interference by equity courts with state systems of supervision, control and liquidation of quasi-public institutions.

This Court recognizes that "a proper respect and deference on the part of the Federal agencies of government toward those of the state compel the assumption that the state agency is able and willing to perform its statutory duties."

This is true even where a quasi-public corporation is not involved. How much more so where the corporation involved is a building and loan association?

In the most recent case where a receivership was obtained by the filing of a consent decree, this Court gave warning against the abuse of the practice of appointing Federal receivers upon a consent answer, where the application is predicated on diversity of citizenship.

In SHAPIRO v. WILGUS ET AL., RECEIVERS, 287 U. S. 348, 77 L. Ed. 149 (1932), Mr. Justice Cardozo, said at page 152:

> "We have given warning more than once, however, that the remedy in such circumstances is not to be granted loosely, but is to be watched with jealous eyes. * * * Never is such a remedy available when it is a mere weapon of coercion, a means for the frustration of the public policy of the state or the locality. * * *"

The filing of the bill and consent answer in this proceeding within twenty-four hours of the application for receivership was an effort to frustrate the public policy of Pennsylvania. The court below became a party to an effort to deprive the Secretary of Banking and the state court of their jurisdiction over the affairs of the association. The undenied averments of the Commonwealth's petition show the reason for the effort made to achieve this end.

Before closing our argument on this point, we feel that we should call the Court's attention to PORT NEWARK NAT. BANK OF NEWARK v. WALDRON, 46 Fed. (2d) 296 (C. C. A. 3rd Cir. 1930). In that case a district court appointed a receiver to take charge of the affairs of a national bank. The receiver appointed by the Comptroller of the Currency under the provisions of the United States statutes appealed from the decree making this appointment.

The Comptroller of the Currency holds a position with respect to national banks similar to that held by the Secretary of Banking with respect to Pennsyl-

vania banks, trust companies and building and loan associations. In the PORT NEWARK CASE the Comptroller had been supervising the institution with a view to liquidation and was conferring with the bank's officers on a plan that might make such course unnecessary. On the very day of the conference a stockholder presented to the district court a bill praying for a receivership. The court granted a rule to show cause why receivers should not be appointed. The following morning the Comptroller appointed a liquidator under the authority of the Revised Statutes of the United States (12 U. S. C. A. Section 191), providing that "Whenever the comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of its affairs * * * appoint a receiver who shall proceed to close up such association."

The circuit court held that (page 279):

> "* * * the authorities are clear that the appointment of receivers by the Comptroller is part of a complete federal system looking to the control of national banks, and that such receivers are not like a receiver appointed by a court, but are officers of the United States, and their possession of the bank is the possession of the United States. * * *"

The similarity of the situation to that of the case at bar is striking. The Secretary of Banking is not like a receiver appointed by a court, although he is given by statute the powers of such a receiver. He holds and exercises those powers by virtue of his statutory office. Possession by him of a building and loan association

or bank is possession by the Commonwealth of Pennsylvania.

Judge Buffington's language at page 298 of the PORT NEWARK CASE, states our situation precisely:

> "We pass over the omission to give notice to the bank of the filing of the bill and the application for a receiver; of the failure to give bond either when the injunctive ex parte restraining order of August 7th was entered, or, indeed, when the final injunction order of August 13th was made; of the effect of the filing of the bill in precipitating the closing of the bank and making impossible of performance the acceptance of Mr. Rippel's offer on behalf of the Merchants' & Newark Trust Company of taking over the bank and preventing its closing; and confine ourselves solely to the question whether the Comptroller's receiver was lawfully ousted from his possession. We are of opinion he was not. **This is not a conflict between two courts of co-ordinate jurisdiction, but is one between the judicial and the executive arm of the sovereignty.** In our view, the threatening status of this bank on August 7th and its efforts to prevent its failure necessitated the supervision and 'dominion' of the Comptroller, and, when that duty was begun by the bank examiner, the Comptroller had 'dominion' over the bank's affairs, and so continued until the efforts to prevent closing the bank were defeated by the filing of this bill. When this happened, it became the duty of the Comptroller, who, as his order stated, 'had information on file in this bureau that the bank is insolvent,' to appoint a receiver and close the bank. The wisdom of his so doing prevented a run and a depletion of the bank's assets. For it will be observed that the court's order of August 7th was

not to close the bank, but to except from its order 'the ordinary course of business of the bank'—a situation that would have precipitated a run upon it and a depletion of its assets from August 7th until August 13th, when the court's order appointing a receiver was entered. * * *"

Then KORLBY v. SPRINGFIELD INST. FOR SAVINGS, 245 U. S. 330, 62 L. Ed. 326 (1917) was cited. There the Supreme Court speaking through Mr. Justice Clarke said (page 333):

"From the earliest days of the administration of the National Banking Act to this case attempts have been made in many forms to give to it a technical construction which would so restrict the powers of the Comptroller as to greatly delay and impede the settlement of the affairs of insolvent banks. But this court has uniformly declined to narrow the act by construction, and has placed a liberal interpretation upon its provisions to promote its plain purpose of expeditiously and justly winding up the affairs and paying the debts of such unfortunate institutions. * * *"

Judge Buffington continued in the PORT NEWARK NATIONAL BANK CASE (page 299):

"* * * Sufficient to say that in the present case we regard the Comptroller at the time this bill was filed as having complete dominion over, and, by his bank examiner, full legal control of, the then and future operations of the bank, and that such situation might ultimately require the appointment of a receiver. Consequently, the court below, when the bill was filed, acquired no jurisdiction to shear the Comptroller of the statutory power to take the further step of appointing a

> receiver in case insolvency existed and the attempted sale fell through. As the order states the comptroller had on file at that time information of the insolvency of the bank, it is clear he had already complied with the statutory provisions of 'on examination of its affairs,' after which he 'may appoint a receiver.'"

In the instant case the Secretary of Banking had complete dominion over the affairs of Mortgage Building and Loan Association at the time the complainant's bill was filed. We do not say that the Court of Common Pleas of Philadelphia County, in which the certified copy of the certificate of possession was filed, had jurisdiction at that time. Nor do we say that such jurisdiction as it obtained upon the filing of such certificate, dated back to a time prior to the filing of the bill in this case. We do say that the Secretary of Banking, having exercised dominion over the association long prior to the application to the district court, had jurisdiction as a statutory officer, with which the district court should not have interfered.

Receivers' counsel and the court below treat this case as if it involved a dispute between two courts. Because the bill in equity was filed on February 8, 1933 and it was not until February 17, 1933 that the Secretary of Banking filed a certified copy of his certificate of possession in the court of common pleas, they argue that the Federal court first took jurisdiction, and merely because of that fact should continue to hold it.

From our standpoint, it is immaterial whether the

District Court obtained jurisdiction before the state court, granting for the moment that the court had jurisdiction.

The question is much more far-reaching than that.

We are urging, that even if the District Court technically had jurisdiction, it ought not to have exercised it.

But in any event it is clear that the District Court, technically was obliged to rely upon the consent answer filed by the officers of the association who secured employment in the receivership, to justify its action in making its appointments permanent. And, we submit, a consent receivership should never be permitted to defeat a state system of regulating, supervising and liquidating its quasi-public institutions such as banks and building and loan associations.

Using language equally as forceful as that which we have quoted from Federal appellate court decisions, the state courts have repeatedly upheld the systems established by state law to supervise and liquidate banks, building and loan associations and insurance companies.

The highest courts of several states have used the writ of prohibition or equivalent remedy to halt any effort of a court of first instance to usurp the powers reserved by statute to administrative officers in such cases.

ABBOTT, COM. OF BANKING, v. MORRIS, Judge, 132 S. E. 372 (S. C. A. W. Va. 1926)

GREEN, SUPERINTENDENT OF BANKS, v. SMITH ET AL., 129 So. 92 (S. Ct. Fla., 1930)

STATE OF FLORIDA EX REL. DADE COUNTY SECURITY CO. ET AL. v. BARNS ET AL., 128 So. 860 (S. Ct. Fla., 1930)

STATE OF FLORIDA EX REL. LANDIS, ATTY. GEN. v. CIRCUIT FOR ELEVENTH JUDICIAL CIRCUIT ET AL., 135 So. 866 (S. Ct. Fla., 1931)

STATE OF FLORIDA EX REL. PORTER ET AL. v. ATKINSON, CIRCUIT JUDGE, ET AL., 146 So. 581 (S. Ct. Fla., 1933)

STATE OF MISSOURI EX REL. MISSOURI STATE LIFE INS. CO. v. HALL, JUDGE, ET AL., 52 S. W. (2d) 174 (S. Ct. Mo., 1932)

STATE OF OHIO EX REL. BETTMAN v. COURT OF COMMON PLEAS OF FRANKLIN COUNTY, 178 N. E. 258 (S. Ct. Ohio, 1931)

UNION SAVINGS AND INVESTMENT CO. v. DISTRICT COURT OF SALT LAKE COUNTY, 140 Pac. 221 (S. Ct. Utah, 1914)

Clearly, the association, existing and functioning only because the Commonwealth of Pennsylvania gave it existence and provided rules for the conduct of its affairs, could not, least of all in a court of equity, nullify the effect of its creator's laws. It could not legally take itself outside the jurisdiction of the state, escape the supervision of the Department of Banking, and ignore orders issued by the Secretary.

The mere fact that a consent answer, authorized by the directors the night before, was submitted to the judge as chancellor, should have served not as an excuse for the appointment of temporary receivers, but as the very reason for refusing such appointment.

The association itself could not violate, with impunity, an order of the Secretary of Banking. Certainly a shareholder, whose interest in the association is that of one of many partners, merely because of residence beyond the borders of the Commonwealth, should not be permitted to set aside the application of Pennsylvania laws and the Pennsylvania system of supervision over associations.

## III.

**Even if the District Court Had Jurisdiction to Appoint Receivers, it Was Error to Deny the State's Application For Leave to Intervene and to Refuse to Order the Assets Turned Over to The State Secretary of Banking.**

Again we call attention to the complete State system for the organization, regulation and liquidation of building and loan associations established by "The Banking Act of 1923", as set forth in the Appendix to this brief.

Under that system, the Secretary of Banking has large discretion even after he takes possession of a building and loan association. He has the right to continue the business or to liquidate its affairs. He may surrender possession to enable the association to

merge with another association. He may sell assets at public or private sale, subject to certain restrictions. He may effect compromises of claims. And he has other powers which, properly exercised, assure to stockholders and creditors the most favorable and least expensive determination of the association's difficulties.

Paragraph IX of Section 21 of the act authorizes the Secretary to take possession of any corporation under his supervision, with the approval and consent of the Attorney General, when such corporation "Is in the hands of a receiver appointed by any court, or in any bankruptcy proceeding, or of an assignee or trustee for creditors appointed by such corporation or person".

Section 22 of the act provides that:

> "From and after the filing of such certified copy in the office of the prothonotary, the Secretary shall supersede any receiver previously appointed by any court for, or any assignee or trustee for creditors appointed by, such corporation or person."

Clearly, the Legislature of Pennsylvania meant to assure stockholders of all building and loan associations that the State itself, acting through one of its principal officers, would assume exclusive charge of all liquidation proceedings.

The State's policy in such matters should not be nullified by the continuance of a court receivership,

after the Secretary of Banking has taken appropriate steps to carry the State's policy into effect.

Comity between the Federal and State governments demands that the Federal authorities do their utmost to effectuate State policy in matters involving these quasi-public corporations.

And generally speaking this has been the attitude of those Circuit Courts of Appeal which have had an opportunity to express themselves upon a question such as the one here presented.

In LYON v. MCKEEFREY, 171 Fed. 384 (C. C. A. 3rd Cir. 1909), a nonresident creditor of a Pennsylvania bank secured the appointment of Federal receivers, who carried on liquidation to the point where creditors were paid. The state banking official sought an order on the receivers to turn over the balance of the assets to him. The district court refused such order, but the Circuit Court of Appeals reversed the court below. It held that the state system for the government of banking institutions and insurance companies is such that a Federal court should not interfere with it.

In the course of his opinion, Judge Gray said (page 392):

> "The defendant corporation was a creature of the laws of Pennsylvania, and by those laws the rules governing its existence were prescribed. The measure of control to be exercised over its own corporations was determinable by the law and policy of the state to which they owed their being.

> By the legislation here in question, the state of Pennsylvania has seen fit to subject such corporations to supervision and administrative control and has ordained the proceedings, partly administrative and partly judicial, by which the life of such corporations may be determined and their affairs wound up and liquidated. The judicial proceeding is not one that may be instituted by private parties, but by the Attorney General of the state, acting on behalf of the commonwealth and in the interest of the public. Such a proceeding is not one of which a United States court can have concurrent jurisdiction. It does not involve a controversy between privates parties, whether citizens of the same state or of different states."

In principle there is absolutely no difference between a case involving an insurance company or a bank, and a case involving a building and loan association.

In O'NEIL v. WELCH, 245 Fed. 261 (C. C. A. 3rd Cir. 1917), the court had for consideration Pennsylvania's right to administer the affairs of its insurance companies through the Insurance Commissioner. The Commissioner, through the Attorney General, proceeded in a state court under the state's statute against Union Casualty Insurance Company of Pennsylvania. Thereafter, a nonresident stockholder filed a bill in the district court alleging insolvency and asking for the appointment of a receiver. The defendant company filed a consent answer. One day before the proceeding in the state court came to a head, the district court appointed a receiver. The Attorney General thereupon filed a petition in that

court to vacate the appointment. The district court dismissed the petition but on appeal, was reversed.

The receivers in the case at bar take comfort in certain language used by Judge Woolley, indicating that the jurisdiction of the state court was sustained because that court had acted first. But the Court did recognize the rule that state systems of control over quasi-public institutions must be respected. At page 267 Judge Woolley said:

> "The state engaged in this undertaking primarily for the protection of the public. Being for the public, its action is a governmental function. When in its exercise it becomes necessary to protect the public from insolvent or improperly conducted insurance companies, the state pursues a remedy prescribed by the same law that conferred the corporation's rights and defined the state's duties. Given briefly, the Insurance Commissioner, acting through the Attorney General, files in a State court a suggestion of the corporation's insolvency or unlawful conduct. In this way the State acts and in this way the State begins suit. Upon the State's suggestion the court starts a judicial inquiry by directing to the Insurance Company a rule to show cause why the Insurance Commissioner should not take possession of its property, **and at the same time** (that is at the very beginning of the suit) the court, if it wishes, lays its hand upon the company's property, and by a restraining order holds it within its control pending the inquiry.
>
> "The jurisdiction of the State court thus invoked is a special jurisdiction conferred by statute as a part of the State's policy of insurance

regulation and control. It is not conferred for the protection of corporations' policyholders and creditors alone, but for the protection of the public as well. This clearly appears by the terms of the act; it again appears in the court's decree. In prosecuting an insurance company the State is acting for the public, and the public is in turn interested in the proceedings; though not nominally present as a party, it is nevertheless present in the person of the Attorney General."

And Judge Woolley said, at page 268:

"* * * As against stockholders, the law is equally effective. The law under which an insurance company is incorporated subjects it to State supervision and administrative control, and ordains the proceeding by which its life may be determined and its affairs wound up and liquidated. The rights of such a corporation are therefore subordinate to the rights of the State, and the rights of stockholders are no greater than those of the corporation. When, therefore, the statutory proceeding has been begun in a State court and by its commencement jurisdiction has been acquired over the corporation, neither the corporation nor its stockholders, nor its creditors can divest the court of its jurisdiction or deprive the State of its public function by subsequently invoking the aid of a Federal court to remove the corporation's property beyond the reach of the State court and thereby withdraw from the State court the subject matter of the action there pending. If this were not so, every action instituted by the state government against an insurance company might be interrupted and defeated by a nonresident stockholder filing in a Federal court a bill accompanied with the answer of an acquiescing corporation, after action has been begun in

> the State court and before in its orderly progress the property of the corporation has been physically seized. Thus the policy of the State would be thwarted and its administration overthrown; the State's creature would be more powerful than the State itself. We are satisfied that no such thing was contemplated either in Federal or State policy."

And in MITCHELL v. LAY, 48 F. (2d) 79 (1930), the Circuit Court of Appeals, Ninth Circuit, reversed in order requiring the Insurance Commissioner of California to turn over to a Federal receiver funds of an insolvent insurance company which were in his possession. We have already quoted the language of Judge Wilbur, supra, pages 31 and 32.

In LILLARD v. LONERGAN, 72 F. (2d) 865 (1934), the Attorney General of Kansas instituted quo warranto proceedings against The Wheat Farming Company for acting beyond its charter powers. The State court held that while a forfeiture of the charter was justifiable, it would for the present decree only that within a reasonable time the corporation discontinue its illegal activities and dispose of assets not needed for its lawful purposes. The court further decreed that if it should prove impossible for the corporation to limit its activities in this manner, it should then be liquidated and be dissolved. The court went on to say that if these orders were not complied with "the writ of ouster will issue and such further orders as may be necessary and expedient will be made". Thereafter creditors of the company successfully resorted to a Federal court for the appointment of receivers. There-

upon the State court appointed receivers to liquidate the business of the corporation and to dissolve its affairs. These receivers and the Attorney General of Kansas then petitioned the district court to discharge the receivers it had appointed and order them to deliver all of the property of the company to the receivers appointed by the State court. The district court denied the petition. Upon appeal, the Circuit Court of Appeals for the Tenth Circuit reversed the lower court, vacating its decree and directing its receivers to deliver all property in their hands as such receivers to the receivers subsequently appointed by the State court. Judge Lewis said at page 871:

> "The rule as between courts having concurrent jurisdiction over parties and subject matter, when a controversy arises as to which has the better right to possession, has no application here. The proceeding instituted in the state Supreme Court could not have been maintained in the Federal Court, nor the one in the Federal Court in the state Supreme Court. The one in the Federal Court was antagonistic to the one in the state court. The bill there sought to stay the hand of the state court, to nullify its probable action and thwart the purpose of the proceeding in that court. * * *"

(Certiorari refused November 12, 1934).

That is the precise case here, except that in the instant case and under the Pennsylvania law applicable an administrative official, and not a court upon the instance of an administrative official, had taken the intermediate action looking to the possible eventual liquidation of the corporation. Here the Secretary

of Banking placed the association upon a restricted basis pending his determination of whether to take possession as a liquidating receiver. In LILLARD v. LONERGAN, the State court, upon the instance of the Attorney General followed a similar policy with respect to a business corporation organized under the laws of that State.

We submit that in the present case, the District Court should have ordered its receivers to turn the assets of the building and loan association over to the Secretary of Banking, just as the Circuit Court of Appeals for the Tenth Circuit ordered the Federal receivers to turn over to the receivers subsequently appointed by the State court the assets of The Wheat Farming Company.

We insist that when the Secretary of Banking issued his order placing the association under restrictions and when its officers, complying with that order, performed what the Secretary of Banking directed in his partly administrative, partly judicial capacity, the control of the association was thereafter exclusively with the Secretary of Banking and with the State court in which he later filed his certificate of taking possession.

It is true that there was no court proceeding prior to that instituted in the district court. Nevertheless, the procedure before the Secretary of Banking ultimately leading to a court proceeding has the same character.

One of the reasons urged in the court below for appointing receivers was that a non-assenting stockholder of one of the constituent associations comprising the merger resulting in the formation of the Mortgage Building and Loan Association had obtained a judgment and was threatening execution against the Mortgage Building and Loan Association. Even if this averment justified the district court in appointing temporary receivers and enjoining any executions against the association, it cannot of course serve as a valid ground for the appointment of permanent receivers to liquidate the association. Nor can it justify the district court judge's denial of the Commonwealth of Pennsylvania's petition to intervene or of its request that the judge order the receivers he had appointed to turn the assets of the association over to the State Secretary of Banking after that official had taken possession of its affairs in the exclusive manner provided by State law.

There can be no doubt that the Commonwealth should have been permitted to intervene in this proceeding.

The higher Federal courts themselves have sustained the contention of the states and their administrative officials that where a system has been established by the state law for the creation, regulation, supervision and liquidation of insurance companies and banking institutions, that system will not be upset on the application of an individual stockholder or creditor for a Federal receiver.

In harmony with the decisions cited, this court should reverse the court below and order the discharge of the receivers appointed by the District Court following their prompt delivery of the association's assets to the Secretary of Banking.

## IV

### Cases Cited by the Courts Below

In his opinion, Judge Davis of the Circuit Court of Appeals cited to sustain his position, the following cases:

NATIONAL SURETY CO. v. STATE BANK, 120 Fed. 593, 602 (1903);

MORRILL v. AMERICAN RESERVE BOND CO., 151 Fed. 305, 313 (1907);

O'NEIL v. WELCH, 245 Fed. 261, 265 (1917);

LEADVILLE COAL CO. v. MCCREERY, 141 U. S. 475, 477 (1891).

We have already discussed O'NEIL v. WELCH, ante pages 44 to 47.

The NATIONAL SURETY COMPANY case did not involve the question whether a Federal court should appoint receivers to liquidate a State quasi-public corporation. It involved the right of the surety company to seek in a Fderal court equitable relief against enforcement of an unconscionable judgment rendered against it in a state court. The language of Judge Sanborn, quoted

by Judge Davis (R. 64), is part of the discussion of the complainant's right to obtain equitable relief even though the state statutes provide an original proceeding in the court in which the judgment was entered. Very properly the Circuit Court of Appeals for the Eighth Circuit said (p. 603): "the proceeding provided by the Code of Nebraska does not oust the jurisdiction in equity of the national Circuit Court" for the reason that "while state legislation may enlarge, it cannot destroy or impair, that jurisdiction." And further, "* * * the provisions of the Code of Nebraska * * * do not purport or attempt to destroy or to diminish the jurisdiction in equity of either the federal or the state courts."

The Commonwealth does not contend in the instant case that The Banking Act 1923 does that. It is the lack of a justiciable controversy that denies the shareholder complainant a right to relief.

In Morrill v. American Reserve Bond Co., Judge Sanborn said, at page 307:

> "* * * The Attorney General [of Missouri] and * * * his associates, speaking for the three officers of the state, say that, as this court has jurisdiction of the subject-matter and of the parties to this suit, they prefer to bring this property to, and place it in the hands of, this court * * *."

This case did not involve the question whether receivers could be appointed by a Federal court to liquidate a quasi-public corporation. If the case had involved this question, it would not have been comparable to the situation in the case at bar because the

state statutes of Missouri provided for the liquidation of bonding companies by receivers appointed by state courts.

LEADVILLE COAL CO. v. McCREERY, supra, involved the property of a commercial corporation in the possession of a Federal court receiver at the time dissolution proceedings against the company were instituted in a state court. The Supreme Court upheld the right of the receiver to deal with the assets without regard to the proceedings in the State court.

Judge Davis also quoted from Judge Welsh's opinion (R. 67, 68) a paragraph citing the following cases in which district courts appointed receivers for building and loan associations:

SLEEPER v. WINKEL, 122 Fed. 736 (C. C. E. D. Pa. 1903).

TOWLE v. AM. B. L. & INVESTMENT CO., 60 Fed. 131 (C. C. N. D. Ill. 1894).

WILSON v. PARVIN, 119 Fed. 652 (C. C. A. 6, 1903).

FLINN v. INTERSTATE B. & L. ASSN., 141 Fed. 672 (C. C. S. C. 1905).

UNIVERSAL SAVINGS & TRUST CO. v. STONEBURNER, 113 Fed. 251 (C. C. A. 4, 1902).

POWERS v. BLUE GRASS B. & L. ASSN., 86 Fed. 705 (C. C. Ky., 1898).

DOUGLASS v. KAVANAUGH, 90 Fed. 373 (C. C. A. 6, 1898).

MIERS v. COLUMBIA MUTUAL B. & L. ASSN., 157 Fed. 940 (C. C. S. D. N. Y. 1907).

COLTRANE v. BALTIMORE B. & L. ASSN., 110 Fed. 272 (C. C. Md. 1901).

MACMURRAY v. GOSNEY, 106 Fed. 11 (C. C. W. D. Pa. 1901).

ALEXANDER v. SOUTHERN HOME B. & L. ASSN., 110 Fed. 267 (C. C. N. D. Ga. 1900).

MILES v. NEW SOUTH B. & L. ASSN., 111 Fed. 946 (C. C. E. D. La. 1900).

MANORITA v. FIDELITY TRUST & LOAN CO., 101 Fed. 8 (C. C. S. D. Ala. 1900).

GALLOWAY v. MICH. SAVINGS & LOAN ASSN., 206 Fed. 241 (C. C. A. 6, 1913).

COOPER v. NEWTON, 160 Fed. 190 (C. C. S. D. Ga. 1908).

SOLOMONS v. AMERICAN B. & L. ASSN., 116 Fed. 676 (C. C. N. D. Ga. 1902).

It will be noted that the latest of these cases was decided in 1913, and that case (GALLOWAY v. MICHIGAN SAVINGS & LOAN ASS'N) involved a receivership proceeding dating from 1901. That was long before the States had adopted the policy of establishing a system for the organization, supervision, regulation and liquidation of building and loan associations.

For example, in Pennsylvania the Banking Commissioner was for the first time given exclusive power to liquidate building and loan associations by the Act of May 21, 1919, P. L. 209.

In none of these cases was the question considered whether the Federal courts would appoint receivers to liquidate quasi-public corporations contrary to the policy of State law providing an exclusive method for this purpose.

## CONCLUSION.

This case, GORDON, SECRETARY OF BANKING v. OMINSKY et al., October Term 1934, No. 395, and GORDON, SECRETARY OF BANKING v. WASHINGTON, et al., and GORDON, SECRETARY OF BANKING v. O'BRIEN et al., are the only decisions of United States Circuit Courts of Appeal refusing to give effect to State laws governing the method of liquidating quasi-public corporations. All of these cases were decided at about the same time. In the two last mentioned, petitions for certiorari to this court are pending. They involve the appointment of receivers to take out of the hands of the Secretary of Banking assets of a closed bank.

These decisions reflect a complete change in the attitude of the Circuit Court of Appeals of the Third Circuit on this important subject. In the earlier cases, LYON v. MCKEEFREY, 171 Fed. 384 (1909) and O'NEIL v. WELCH, 245 Fed. 261 (1917) this same court gave strong expression to its belief that Federal Courts should support State systems for the organization, regulation, supervision and liquidation of quasi-public

corporations. The former case dealt with a bank; the latter with an insurance company.

In the following cases, stockholders of quasi-public corporations were held to have no standing to seek relief in a Federal Court, contrary to the provisions of the State law under which the corporations were organized:

McGarry v. Lentz, 13 F. (2d) 51 (1926), C. C. A., Sixth Circuit.

Cook v. Illinois Bankers' Life Ass'n., 46 F. (2d) 782 (1931), C. C. A., Seventh Circuit.

In the following cases, circuit courts of appeal reviewed the exercise of discretion by district courts in appointing receivers for quasi-public corporations or for certain assets of such corporations, and sustained the State authorities:

Mitchell v. Lay, 48 F. (2d) 79 (1930) C. C. A., Ninth Circuit. Petition for Certiorari to U. S. Supreme Court denied. 283 U. S. 864 (1931).

Bank of Bay Biscayne v. Hankins, 42 F. (2d) 209 (1930) C. C. A., Fifth Circuit.

Amos v. Trust Co. of Florida, 54 F. (2d) 286 (1931) C. C. A., Fifth Circuit. Petition for Certiorari to U. S. Supreme Court denied. 285 U. S. 559 (1932).

In the following cases receiverships were set aside even though the bill in equity had been filed before the

state officer took possession of the quasi-public corporation's property and assets:

AMOS v. TRUST CO. OF FLORIDA, 54 F. (2d) 286 (1931) C. C. A., Fifth Circuit. Certiorari refused. 285 U. S. 559.

MITCHELL v. LAY, 48 F. (2d) 79 (1930) C. C. A., Ninth Circuit. Certiorari refused. 283 U. S. 864.

In the following cases Federal receivers were required to turn over to the state authorities the assets of a quasi-public corporation at the instance of the proper state officer. In all of them the district court was reversed:

LYON v. MCKEEFREY, 171 Fed. 384 (1909) C. C. A., Third Circuit, Judge Gray.

MITCHELL v. LAY, 48 F. (2d) 79 (1930) C. C. A., Ninth Circuit. Certiorari refused, 283 U. S. 864.

O'NEIL v. WELCH, 245 Fed. 261 (1917) C. C. A., Third Circuit.

LEE v. EDMUNDS, 66 F. (2d) 122 (1933) C. C. A., Fifth Circuit.

However, in the two cases last cited the Federal receivership was junior to a state receivership.

Thus we find support for our position in the expressions of the Circuit Courts of Appeal of the Second, Third, Fifth, Sixth and Ninth Circuits.

Except for the present case and the three other cases decided at practically the same time, there are no Circuit Court of Appeals decisions to the contrary in any circuit.

On principle, we submit that the decree of the Circuit Court of Appeals should be reversed.

The complainant in the district court is a stockholder of the building and loan association. He is bound by the laws of Pennsylvania establishing the State's system for the supervision, regulation and liquidation of such associations. He could not have a justiciable controversy with the association regarding its liquidation.

But if such a controversy could exist, and diversity of citizenship gave the district court jurisdicton, that court abused its discretion in appointing permanent receivers to liquidate the association upon a consent answer, when the State Secretary of Banking had actually taken jurisdiction over this association and had placed it upon a restricted basis. The Federal courts should not, in such cases, lend their aid to efforts to frustrate the state's settled policy in regulating and liquidating quasi-public corporations.

Finally, notwithstanding the fact that receivers had been appointed, the State certainly had such an interest in the proceedings as to entitle it to intervene; and the court below should have ordered the assets of the association turned over to the Secretary of Banking as prayed in his petition. Comity between the

Federal and State governments in matters within the proper cognizance of their respective authorities, demands that this action be taken.

For these reasons, we believe that the decree of the court below should be reversed.

Respectfully submitted,

WM. A. SCHNADER,
*Attorney General.*

HAROLD D. SAYLOR,
*Deputy Attorney General.*
*Attorneys for Petitioner.*

# APPENDIX.

## EXCERPTS FROM THE PENNSYLVANIA BANKING ACT OF 1923.

(Act of June 15, 1923, P. L. 809, as amended by the Act of May 5, 1927, P. L. 762, the Act of May 28, 1931, P. L. 193, the Act of June 12, 1931, P. L. 563, and the Act of May 20, 1932, P. L. (Special Session) 7, 7 PS Sec. 1, et seq.)

Section 1. Short Title.—Be it enacted, &c., That this act shall be known and may be cited as "The Banking Act 1923."

Section 2. Definitions.—Except as otherwise expressly indicated, the following words, wherever used in this act, shall be taken and construed to have the following meanings:

"Department" means Banking Department, which shall after the fifteenth day of June, one thousand nine hundred and twenty-three, be known as the Department of Banking.

"Secretary" means the Secretary of Banking.

"Person" means an individual, a partnership, or an unincorporated association.

"Court" means the court of common pleas of the county where the banking house or other place of business of the corporation or person in question is lo-

cated, and in which the certificate of liquidation is filed, as required by section twenty-two of this act.

"Prothonotary" means the prothonotary of such court.

* * * * * * *

Section 4. Department—Scope of Supervision—Powers—Duties.—There shall continue to be a separate and distinct department, known as the Department of Banking, charged with the supervision of all the corporations and persons hereinafter described, and with the duty of taking care that the laws of this Commonwealth in relation thereto shall be faithfully executed, and that the greatest safety to depositors therein or therewith and to other interested persons shall be afforded.

The said supervision, duties, and powers shall extend and apply to the following corporations now or hereafter incorporated under the laws of this State or under the laws of any other State and authorized to transact business in this State; namely, all such corporations having power to receive and receiving money on deposit or for safe-keeping otherwise than as bailee, including all banks, banking companies, cooperative banking associations, trust, safe deposit, real estate, mortgage, title insurance, guarantee, surety and indemnity companies, savings institutions, savings banks, and provident institutions. The said supervision, duties, and powers shall also extend and apply to mutual savings funds, building and loan associations, and corporations doing a safe-deposit business only.

Section 13. Power to Examine and Inspect.—Every corporation and person included within the supervision of the department as set forth in section four of this act, together with all the property, assets, and resources of such corporation or person, shall be subject to inspection and examination by the secretary or his deputies, or any qualified examiners of the said department when such examiner is authorized in writing, under the official seal of the department, by the secretary or a deputy, to make such examination and inspection.

Section 14. Examinations—

(a) In General.—It shall be the duty of the secretary, at least once in each year, to examine or cause to be examined the books, papers, and affairs of each and every corporation and person subject to the supervision of the department. The secretary may also, at any time, make such special investigations or examinations as, in his opinion, the exigencies of any case may require. Whenever he shall deem it necessary or proper, he shall assign a qualified examiner or examiners to make any such examination or investigation, which examiner or examiners shall have power to make a thorough examination into all the business and affairs of the corporation or person in all departments and of all property, assets, and resources wherever situated, and, in so doing, to examine, under oath or otherwise, any of the officers, agents, employes, or members of the corporation or person, or any corporation or person in possession of any assets, or having knowledge of any assets, of the corporation or person

under examination. The examiner or examiners shall make a full and detailed report of the condition of the corporation or person under examination, or such special report as may be directed by the secretary.

* * * * * * *

Section 15. Reports to Secretary—

(a) In General.—Every corporation and person subject to the supervision of the department, except building and loan associations doing business exclusively within this State, shall make and render to the secretary not less than two or more than five reports of its or his conditions during each year. The number, form, and manner of such reports shall be prescribed by the secretary by general rule or regulation. Every such report shall be verified by the oath or affirmation of the president, cashier, treasurer, or other managing officer in the case of a corporation or association, by a member of the firm in the case of a partnership, and by an individual banker in person. It shall be attested as correct by the signatures of at least three of the directors, trustees, or other managers of a corporation or association, and by the signatures of at least two of the members of a partnership.

Each such report shall exhibit, in detail and under appropriate heads, the resources and liabilities of the corporation or person at the close of business on any past day specified by the secretary, and shall be transmitted to him within five days or such further time as he may, in his discretion, allow, after the receipt of a request or requisition thereof from him.

Abstract summaries of two of said reports, designated by the secretary, in each year, except the reports

of building and loan associations doing business exclusively within this State, shall forthwith be published by the corporation or person in a newspaper, and proof of such publication, verified by affidavit, shall be furnished to the secretary.

Building and loan associations doing business exclusively within this State shall, in the manner hereinbefore provided, make and render one report during each year. No abstract summaries of such reports need be published.

The secretary shall have power to call for a special report from any corporation or person under the supervision of the department, including building and loan associations, whenever, in his judgment, the same may be necessary to a full and complete knowledge of its or his conditions.

The reports and publications provided for in this clause shall be in lieu of all reports and of all publications for similar purposes heretofore required by law to be made.

* * * * * * *

Section 20. Orders by Secretary.—Whenever it shall appear to the secretary that any corporation or person under the supervision of the department has violated any provision of this act or any law regulating the business of such corporation or person, or is conducting business in an unauthorized or unsafe manner, or that any such corporation has an impairment of capital, the secretary may issue an order, under his hand and seal of office, directing such corporation or person to discontinue such violation of law or such unauthorized or unsafe practices, or directing such cor-

poration to make good, within a time of not more than sixty days after notice by the secretary, any impairment or deficiency of capital.

Section 21. Power of Secretary to Take Possession. —The secretary may, after hearing had upon notice given, with the approval and consent of the Attorney General, take possession of the business and property of any corporation or person subject to the supervision of the department, whenever it shall appear to him that such corporation or person:

I. Has violated any law regulating its or his business, and has persisted in such violation in disregard of an order duly made by the secretary;

II. Is conducting business in an unauthorized or unsafe manner, and has persisted in disregard of an order duly made by the secretary;

III. Is in an unsafe or unsound condition to continue business: Provided, in such case, That the secretary may forthwith, without such hearing and consent of the Attorney General, take possession of the business and property of any such corporation or person receiving moneys on deposit, when and if, in his opinion, the protection of depositors and the public requires such peremptory action;

IV. Has an impairment of capital, which has not been restored or made good within the time fixed by order of the secretary;

V. Has suspended payment of obligations;

VI. Has neglected or refused to comply with the terms of any lawfully issued order of the secretary;

VII. Has refused, upon proper demand, to submit the records and affairs of the business to the secretary,

a deputy, or any duly authorized examiner or agent of the department;

VIII. Has refused to be examined, upon oath or affirmation, regarding such affairs;

IX. Is in the hands of a receiver appointed by any court, or in any bankruptcy proceeding, or of an assignee or trustee for creditors appointed by such corporation or person.

* * * * * * *

Section 22. Certificate of Taking Possession.—When the secretary shall have duly taken possession of the business and property of a corporation or person as provided in section twenty-one of this act, he shall forthwith make, under his hand and official seal, a certificate setting forth that he has so taken possession, and shall file such certificate in his office, and cause a certified copy thereof to be filed in the office of the prothonotary, who shall index the same in the judgment index under the name of the corporation or person as defendant and the name of the secretary as plaintiff.

From and after the filing of such certified copy in the office of the prothonotary, the secretary shall supersede any receiver previously appointed by any court for, or any assignee or trustee for creditors appointed by, such corporation or person.

Such superseded receiver, assignee, or trustee shall forthwith file his account in the court having jurisdiction thereof, and pay over and deliver to the secretary all moneys, securities, assets, and property of such corporation or person in his custody, possession, or control. Said courts shall allow credit for expenses and for the disbursements properly incurred or made prior

to the taking possession by the secretary, and shall allow proper compensation to said receiver, assignee, or trustee, and his counsel, which, when determined, shall be paid out of the funds of said corporation or person in the hands of the secretary.

Section 23. Injunction to Restrain Secretary.—Whenever the secretary takes possession of the property and business of any corporation or person, such corporation or person may, at any time within ten days, apply to the court for an order requiring the secretary to show cause why he should not be enjoined from continuing such possession. The secretary may be served personally wherever found within the State, or by leaving a copy with the deputy in charge of his office, or by serving the special deputy appointed by him in such proceeding. At the hearing, a copy, certified by the secretary or one of his deputies, of any report of a duly instituted examination of such corporation or person shall be prima facie evidence of the facts therein stated; and if, from such report or reports or other evidence, there shall appear to be just cause for the taking and continuing of possession by the secretary, he shall not be enjoined, unless such report or reports or other evidence shall be overcome by proper proof produced by such corporation or person, in which event the court shall direct the secretary to refrain from further proceedings and to surrender such possession.

Section 24. Special Agents and Assistants.—The secretary may, by the certificate of taking possession provided for in section twenty-two of this act, or by a subsequent certificate in like manner made and filed,

appoint one or more special deputies as agent or agents to assist him in continuing or liquidating the business and affairs of any corporation or person in his possession. He may, from time to time, delegate to such special deputy or deputies such duties connected with such continuation or liquidation as he may deem proper. He may employ such expert assistants and legal counsel, and may retain such of the officers and employes of such corporation or person, as he may deem necessary in the continuation of the business or the liquidation and distribution of the assets. He shall require such security as he may deem proper from his agents and assistants appointed pursuant to the provisions of this section.

Section 25. Notice to Parties Holding Assets.—When the secretary shall have taken possession of the property and business of any such corporation or person, he shall forthwith give notice in writing of such fact to all corporations and persons holding any assets thereof. No one having such notice or actual knowledge that the secretary has so taken possession shall have a lien or charge against any of the assets of such corporation or person for any charge, payment, advance or clearance thereafter made or liability thereafter incurred. The status of all parties shall become fixed on the date the secretary files his certificates of possession in his office in Harrisburg, as provided in section twenty-two of this act.

Section 26. Inventory of Assets.—After the secretary has taken possession as aforesaid, he shall make, or cause to be made, a complete inventory of the assets of such corporation or person, which inventory

shall be verified by oath or affirmation of the person or persons making the same, and shall forthwith file such inventory in his office.

Section 27. Suspension or Continuation of Business.—The secretary is authorized, upon taking possession of the property and business of such corporation or person, to continue or suspend the business for such period as he may deem necessary to enable him to determine whether to liquidate the affairs of such corporation or person, and, during such period, to take such action as in his judgment is necessary to conserve the assets and business.

Section 28. Surrender of Possession by Secretary. The secretary may, upon conditions approved by him, surrender possession in all cases, prior to liquidation and final distribution, for the reasons and purposes and in the manner following, (a) because he is without funds to continue or to liquidate the business and property of which he has taken possession; or (b) to permit to be carried into effect a special plan of liquidation, reorganization, and/or rehabilitation submitted by such corporation or person and assented to by creditors whose claims, as certified by the secretary, aggregate not less than ninety per centum in amount, and not in number, of the total claims certified by the secretary to be due by such corporation or person; provided, such special plan has been approved by the court, excepting in cases of building and loan associations as to which the assent of fifty-one per centum in amount, and not in number, of the total claims so certified by the secretary shall be sufficient; or (c) where

such corporation or person has been found to be solvent, for the purpose of permitting it or him to resume business; or (d) to permit such corporation or person to transfer and convey, for what the secretary may determine to be a good and sufficient consideration, a part or parts of its or his business, property, moneys, credits and other assets to a corporation, existing or to be formed, or to a person; the said business, property, moneys, credits and other assets in question to be transferred and conveyed, except as the secretary may specify otherwise in the order filed by him in the office of the prothonotary as hereinafter provided for, free of all claims against and general liens thereon. The corporation or person taking over the said business, property, moneys, credits and other assets shall pay for the same at appraised values approved by the secretary. The said payment may, with the approval of the secretary, be met by making available, on demand, to depositors and/or other creditors of the transferor corporation or person, funds on deposit with the transferee corporation or person; provided, that the last named corporation or person is empowered to engage in or is actually engaged in the business of a bank of deposit under the supervision of the Secretary of Banking, and when the payment is so met, such funds shall be paid by the transferee corporation or person to said depositors and/or other creditors of the transferor corporation or person pro rata according to their claims and in such percentages thereof or amounts as may be determined by the secretary.

The secretary may retain possession of any balance of assets not transferred and conveyed as aforesaid,

or he may stipulate, as a condition to his approval of a partial transfer, that the balance of assets shall be transferred and conveyed to such number of trustees, as the secretary may designate, for the purposes of liquidation and distribution of the proceeds to those entitled in accordance with the laws of this Commonwealth. In the event the secretary determines to transfer the said balance of assets to such liquidating trustees, they shall be chosen by the creditors and stockholders of such corporation or person at an election, called for that purpose by the secretary, to be conducted under his supervision and subject to his approval; the electors to be listed by the secretary, and each creditor to vote according to the amount due to him as it may appear on the secretary's list, and each stockholder to have one vote for each share of stock held by him; the creditors as a group and the stockholders as a group each to elect such number of all of the trustees as the secretary may designate, but in no case shall the number of trustees designated by the secretary, to act for and be elected by the creditors, be less than two-thirds of the total number of trustees to be elected. The secretary's certificate as to such designation and the result of the election filed in the office of the prothonotary shall be conclusive. The balance of assets remaining in the hands of the secretary, or transferred to such liquidating trustees, may, if, in the judgment of the secretary as certified in the order filed by him in the office of the prothonotary and hereinafter provided for, the circumstances of the prior sale of the other part of the assets so require, be made subject to a preferred claim over other creditors in favor of the purchaser of such other part of the

assets, coupled with the condition that should the portion of the assets previously sold fail to realize in the hands of the purchaser the full purchase price paid therefor, the secretary, or such liquidating trustees, will make good out of the assets in his or their possession the deficiency: Provided, That a claim for such deficiency be made and proved within one year from the date of the transfer; and provided, also, that if the assets previously sold should realize more than the amount paid therefor, the surplus shall be paid to the secretary, or to such liquidating trustees, to be added to the fund in the hands of the secretary, or such liquidating trustees, for distribution to those entitled under the law to the assets remaining in his or their possession.

The secretary and/or such liquidating trustees shall have the right to lease real estate belonging to such corporation or person for such terms and on such conditions as may to him or them seem most advantageous to the estate in his or their possession, and to sell and dispose of the assets and property of such corporation or person, and to make other contracts which, in his or their judgment will prove helpful in carrying into effect the conditions and terms under which the secretary surrenders possession, or which, in his or their judgment, will assist in the liquidation and distribution of those entitled under the law to the proceeds of the property and the assets retained by the secretary or transferred to the liquidating trustees for liquidation and distribution in accordance with law.

The secretary may require the liquidating trustees to report to him, from time to time, regarding the liquidation and distributions conducted by them, and, if he

is not satisfied with the conduct of the trustees in those regards, the secretary, by certificate duly filed in his office and in the office of the prothonotary, may cancel the surrender and again take possession of all the property, moneys, credits and other assets then in the hands of the trustees for liquidation and distribution in accordance with law.

Whenever the secretary shall surrender possession under the provisions of this section, he shall forthwith issue an order, under his official seal, stating therein the conditions and terms under which, and the purposes for which, he has surrendered possession and shall file said order in his office, and cause a certified copy thereof to be filed in the office of the prothonotary, who shall thereupon cause the entries upon the judgment index made pursuant to section twenty-two of this act to be satisfied, and the secretary shall thereupon be discharged from all further liability in the premises.

Whenever the secretary makes a surrender under this section, he shall file in court an account of his administration of the estate to the date of the surrender, showing its then present status, all receipts in cash and expenses incurred, including fees paid out of the fund to attorneys and others; but neither the audit of the account, nor the adjudication of questions there arising, shall be permitted to hinder or delay the carrying into effect of the conditions and terms of the surrender of possession. When such account is filed and adjudicated, the balance on hand shall be awarded by the court to creditors and others entitled thereto under the law: Provided, That if, on final liquidation and distribution, the assets of any corporation or per-

son should prove insufficient to pay in full all claims against the corporation or person, nothing in this section contained and no action taken pursuant to the provisions hereof shall operate to relieve stockholders of such corporation from their liability, if any, under the act of May eleventh, one thousand eight hundred and seventy-four (Pamphlet Laws, one hundred thirty-five), number sixty-eight: Provided further, That liquidating trustees named under this section shall have all the rights to enforce the individual liability of such stockholders as are conferred on the secretary under section thirty-seven of the act of June fifteenth, one thousand nine hundred and twenty-three (Pamphlet Laws, eight hundred nine).

The secretary shall not authorize any decrease of capital stock by a corporation affected by the provisions of this section, except upon compliance by the corporation with the provisions of law as to such decrease.

Section 29. Status of Secretary as Receiver.—Except as herein otherwise provided, the secretary shall, when he has taken possession of the business and property of a corporation or person, have all the rights, powers, and duties of a receiver appointed by any court of equity in this Commonwealth; and he shall be vested, in his official capacity, with all the rights, powers, and duties of such corporation or person and with all the property of such corporation or person, including debts due, liens, or securities therefor, and rights of action or redemption, whether or not the property of such corporation or person, including debts due, liens, or securities therefor, and rights

of action or redemption, are held in the name of such corporation or person, or in the name of some other corporation or person, but actually the property of the corporation or person of which, or of whom, the secretary has possession.

He shall be the representative of the creditors of the corporation or person, and entitled, as such, to have vacated and set aside, for the benefit of the creditors, any judgment, execution, attachment, sequestration, payment, pledge, assignment, transfer, conveyance, or encumbrance, which could have been avoided by the creditors or any of them, or by which it is attempted to give any creditor unlawful preference over another.

He may, with leave of court obtained on petition after notice to all creditors of whom he has knowledge, surrender to the corporation or person any assets, including choses in action, whether the subject of pending proceedings or not, which are burdensome and of no advantage to creditors.

He may enter into leases for real estate belonging to the corporation or person for a period not to exceed three (3) years, upon such terms as may be acceptable to him, without leave of court; and with leave of court may enter into leases for such property for a term not exceeding ten (10) years.

He may, by agreement in writing with the mortgagor and without leave of court, extend the period for the payment of a mortgage on real property for a period not to exceed three years upon such terms as may be acceptable to him.

He may, without leave of court, borrow money from the Reconstruction Finance Corporation and any

other agency of the United States Government or Commonwealth of Pennsylvania, for the purpose of assisting him in the liquidation of the corporation or person, and to expedite the distribution of the assets thereof to the depositors and creditors of such corporation or person, and pledge as security for the loan of such funds any personal property or real estate of such corporation or person.

Section 30. Power of Court to Make and Enforce Orders.—The court having jurisdiction shall have power to make and enforce any and all orders necessary and appropriate to enable the secretary to discharge his duties in connection with the business, property, and affairs of any corporation or person taken into possession by the secretary under the provisions of this act, upon petition of the secretary, acting personally or through his duly authorized deputy, setting forth the facts; and the court shall also have the power, upon petition of the secretary, acting personally or through his duly authorized deputy, to order and direct other corporations or persons in possession of assets or property, belonging to the corporation or person in possession of the secretary, to transfer or convey said property or assets to the secretary, and to execute and deliver any and all necessary instruments in writing to accomplish that purpose.

Section 31. Continuance of Possession—Exceptions.—When the secretary shall have duly taken possession of the business and property of corporation or person as provided in section twenty-one of this act,

he shall hold such possession until the affairs of such corporation or person have been liquidated by him, unless:

I. He shall have been directed by order of court to surrender such possession pursuant to the provisions of section twenty-three of this act;

II. He shall have permitted a resumption of business, or a sale or conveyance of property and franchises, or made a surrender, pursuant to the provisions of section twenty-eight of this act;

III. The stockholders of such corporation, after payment of all creditors in full, shall have elected a trustee or trustees, to continue the liquidation of such corporation, or the court shall have appointed such trustee or trustees, pursuant to the provisions of section fifty of this act, and such trustee or trustees shall have duly qualified to take possession of the remaining assets of such corporation; or,

IV. The depositors and other creditors of such person and the expenses of such liquidation shall have been paid in full.

Section 32. Recording Certificate—Sales—

(a) Recording Certificate of Possession or Surrender.—When the secretary has taken possession of the business and property of a corporation or person, he shall, if there be any real property, file in the office of the recorder of deeds in each county of this State, or with the proper official in any other State or country, where any such real property shall be situated, a certified copy of the certificate required by section twenty-two of this act, which copy shall be recorded in the deed book, and indexed in the grantor's index

in the name of such corporation or person and in the grantee's index in the name of the secretary, and shall also be registered with the proper authority empowered to keep a register of real estate, if any there be; and when the secretary has surrendered possession of the business and property of a corporation or person, he shall in the same manner file a certified copy of the order provided for by section twenty-eight of this act, which shall be in like manner recorded, and shall be indexed in the name of the secretary as grantor and the name of such corporation or person as grantee, and shall also be registered as aforesaid.

(b) Sales of Real and Personal Property.—The secretary may sell at public sale any or all of the real and personal property of such corporation or person without any order of court. He may, with leave of court, after such notice to creditors by advertising or otherwise as the court may direct, sell either real or personal property at private sale upon such terms and under such conditions as the court, upon petition of the secretary, may direct, and all sales theretofore made may be approved by the court.

He may, without leave of court, sell either real estate or personal property at private sale, under such terms as to him may appear reasonable and proper, provided that the net consideration realized from such sale shall be not less than the appraised value of the asset so sold, as set up and established in the inventory and appraisement, filed in the court having jurisdiction over the estate of such corporation or person, as required by section thirty-eight of this act as amended. Sales under this section may be either all

for cash or partly for cash and partly for evidences of indebtedness approved by the court.

(c) Sales of Real Estate Outside of the County.—When any real property of such corporation or person is situated in a county other than that where the banking house or other place of business is located, a petition for leave to sell such property at private sale shall be filed in the court having jurisdiction of the liquidation proceedings, which court, if satisfied of the propriety of such sale, shall make an order or decree authorizing the secretary to sell such real property or so much thereof as the court may designate. Thereupon it shall be the duty of the court of common pleas of the county where in the real property so designated is situated, on petition of the secretary, to make an order for the sale of said property or so much thereof as the court having jurisdiction of the liquidation proceedings shall have designated; and the secretary shall in all cases make a return of the sale to the court of the county in which the real property is situated. If the same be approved by said court, it shall be confirmed, and a certified copy of the return and of the decree of confirmation shall be filed in the court having jurisdiction of the liquidation proceedings.

(d) Sale of Listed and Unlisted Securities.—Listed and unlisted securities may be sold on any of the stock exchanges or otherwise at such time or times, and in such manner as may be determined by the secretary to be necessary for the best interests of the estate of said corporation or person.

Section 33. Execution of Deeds and Documents.—The secretary may execute, acknowledge, and deliver any and all deeds, assignments, bills of sale, releases, extensions, satisfaction, and other instruments necessary and proper to effectuate any sale, lease, or transfer of real or personal property, or to carry into effect any power conferred or duty imposed upon him by this act or by order of court. Any instrument executed pursuant to the authority hereby given shall be valid and effectual for all purposes as though the same had been executed by the officers of such corporation, by authority of its board of directors, or by such person individually.

Section 34. Compromises.—The secretary may, with leave of court, compound or compromise any debt, claim, or judgment due to the corporation or person, and discontinue any action or other proceeding pending therefor, if done in good faith and after proper inquiry; and may require all mortgages, conditional contracts, pledges, and liens of or upon any real or personal property of such corporation or person, to be satisfied, cancelled, or assigned to him, as he may deem best, or he may sell the property subject thereto.

Section 35. Actions and Suits.—For the purpose of executing any of the powers and performing any of the duties hereby conferred and imposed upon him, the secretary may, in the name of the corporation or person, prosecute and defend any and all actions and proceedings at law, in equity, or otherwise, pending at the time when the secretary takes possession of the business and property of such corporation or person.

He may, by bill of discovery or other legal or equitable proceeding, obtain information of, and sue for and recover, any assets, debts, or damages, which such corporation or person might sue for and recover, or which any of the creditors might make available for the payment of their claims.

He may, at any time while he is in possession of the property and business of a corporation, institute and maintain against the directors, trustees, managers, or officers, any action or proceeding which is vested in such corporation or in the stockholders or creditors thereof.

He shall be liable to suit, in his representative capacity, by any person seeking to recover specific property if such property could have been recovered as against the creditors of the corporation or person levying an execution thereon.

Section 36. Judgments Not to Be Liens—Stay of Execution.—No mechanic's lien shall attach, nor shall any other lien attach, to any of the property or assets of the corporation or person by reason of the entry of any judgment against such corporation or person after the secretary has taken possession of its or his property and business and filed a certificate in his office in the capitol at Harrisburg, as required by section twenty-two of this act, and so long as such possession continues.

During such time no execution or attachment shall issue against such corporation or person, nor shall any pending execution or attachment be proceeded with except by special leave of the court, nor shall any pledges holding any assets pledged by any such person or cor-

poration as collateral or in pledge, but belonging to others and actually known as such by the pledgee at the time of the pledge, proceed to forfeit or sell any such collateral or pledged assets after the secretary has taken possession without express permission of the secretary, any provision in any collateral note or agreement to the contrary notwithstanding: Provided, That if the secretary refuses such permission, said pledgee may, with notice to the secretary, apply to the court for leave to sell the collateral held in pledge, and the court may thereupon grant such leave or make such order, and upon such terms, as will best protect the interests of all parties concerned: Provided further, That if such collateral so pledged by any such person or corporation is accompanied by the obligation of the original borrower, the pledgee shall have the right to exercise all the rights, powers and privileges in respect to such collateral, including sale, contained in the obligation held by such pledgee.

No person or corporation shall repledge any collateral held by such person or corporation unless accompanied by the obligation of the original borrower, nor for an amount exceeding the amount of the original obligation due at the time the collateral is repledged.

Any violation of the provisions of this section shall be a misdemeanor, upon conviction whereof, the person so offending shall be sentenced to pay a fine of not exceeding five thousand dollars, or imprisonment for a term not exceeding five years, or both, at the direction of the court.

Section 38. Inventory and Appraisement—Statement of Liabilities.—When the secretary has determined to liquidate the affairs of any such corporation or person, he shall forthwith cause an inventory and appraisement of the assets of such corporation or person, under oath or affirmation, to be made in duplicate, by two disinterested appraisers chosen by him, and shall file such inventories and appraisements, one in his office, and the other in the office of the prothonotary; and, for the purpose of enabling the secretary to do so, he or his duly authorized deputy is hereby empowered to call before him, by subpoena, with or without books and papers, and to examine, the corporation or person, or the officer, director, or employes thereof, taken in possession, under oath, or any person who, he or they have reason to believe, has knowledge of other or further assets of the said corporation or person, or any person who, he or they believe, can give information touching the same. Every witness shall be entitled to receive, out of the estate of the corporation or person, the usual witness fee and mileage for this attendance for these purposes.

* * * * * * *

Section 41. Notice to Depositors and Creditors.—When the secretary shall have determined to liquidate the affairs of such corporation or person, he shall forthwith give written or printed notice to all depositors to produce to him their deposit or pass books for settlement, stating in such notice the amount which the books of the corporation or person show to be due to each depositor, subject to outstanding checks, and notifying such depositors that, unless a settlement of the

deposit or pass books shall show a different amount to be due, or unless a depositor shall, within four months from the date of such notice, make proof, in the matter hereinafter set forth, that the amount due him differs from the amount as shown by the books of the corporation or person, the amount last mentioned will be conclusive as to the amount of the claim of such depositor, subject, as aforesaid, to any outstanding checks.

The secretary shall, at the same time, give written or printed notice to all creditors other than depositors, so far as known to him, to make proof of their claims in the manner hereinafter set forth, within four months from the date of such notice, or be debarred from coming in upon the fund.

He shall also advertise such notices to depositors and other creditors in a newspaper, and in the legal newspaper, if any, designated by rules of court for publication of legal notices in said county, once a week for four successive weeks.

The time within which said depositors and creditors shall make proof of their claims, or make objection to the amount of their deposits as stated by the secretary, may, in the discretion of the secretary, be such period as he may prescribe less than four months but not less than thirty days.

* * * * * * *

Section 45. Partial or Final Account—Objections. —At the expiration of the time fixed by the notice and advertisement for the presentation of claims prescribed in section forty-one of this act, the secretary may file a partial or final account, consisting of a statement of receipts and expenditures, together with

a list of the claims which have been allowed, and, separately, a list of the claims which have been objected to or are disputed, showing, as to all claimants, the names, addresses, and amounts.

If no account is filed within a year from the time when the secretary takes possession, any party interested may petition the court for an order on the secretary requiring the filing of an account.

Any account filed by the secretary shall be duly verified by him under oath or affirmation. Upon the filing thereof, he shall give written or printed notice, to all the depositors and other creditors known to him, of such filing, and that, unless objections shall be filed within thirty days from the date thereof, the same will be confirmed absolutely. He shall also, at the same time, advertise such notice in two newspapers once a week for four successive weeks.

During such period of thirty days, any depositor, other creditor, stockholder, or anyone having any interest, may file in the court objections in writing to said account or to the allowance of any of said claims, a copy of which objections shall forthwith be served upon the claimant whose claim is objected to, or his counsel, and upon the secretary, or his counsel, or the special deputy appointed by him in such proceeding. In the case of the liquidation of building and loan associations, wherever, in this act, the word "creditors" is used, it shall mean shareholders and/or creditors; and in all other cases the word "creditors," wherever used in this act, shall mean depositors and/or creditors.

Section 46. Distribution.—If, at the expiration of

said period of thirty days from the filing of the account, no objections shall have been filed thereto, the same shall be confirmed absolutely. In case objections or exceptions are filed to any claim or claims, the account shall be confirmed absolutely as to those claims against which no objections or exceptions have been filed, and a partial or final dividend, as the case may be, shall be declared and paid by the secretary on all claims as to which no objections or exceptions have been filed. In case there shall be any disputed claim or any claim to which objections shall have been duly filed, the dividend shall be calculated as if all claims were valid and approved, and, after deducting and setting apart such portion of the dividend as may be declared on claims, in accordance with the priorities fixed by law, which are disputed or objected to, the balance shall be distributed among the other claims. If all or any of the claims disputed or objected to shall thereafter be determined to be valid, they shall then receive their portions of such dividend in accordance with the priorities fixed by law. If all or any of such claims be determined to be invalid, the portions of such dividend set apart for them shall be distributed to the valid claims.

Section 47. Conclusiveness of Confirmation and Distribution.—The confirmation of a partial account and distribution thereunder, as aforesaid, shall be conclusive only as to the fund distributed, and shall not prevent the proof and allowance, out of the fund involved in any subsequent account, of claims not presented in time for allowance out of such previous fund.

The confirmation of a final account and distribution

thereunder, after the objections thereto, if any, have been adjudicated as hereinafter provided, shall be conclusive; and shall work and effect a discharge of the secretary and all deputies or their sureties, from all liability in the matter; and the secretary or his successor, except as hereinafter provided in section fifty of this act, is authorized and empowered to destroy all records belonging to the corporation or person in his possession at the expiration of seven years from the date of the absolute confirmation of the final account of the secretary.

Section 48. Hearing and Decision of Matters in Controversy.—If there shall be claims disputed or objected to, or if there shall be objection to the account, the court shall itself, without delay, hear and decide the matters in controversy. The court shall fix a time and place for the hearing, of which notice shall be given by the secretary to all depositors and other creditors whose claims have been disallowed by the secretary, or excepted or objected to by other depositors, creditors, or stockholders, as well as to those depositors, creditors, or stockholders, who have objected to the account or to claims allowed in the account. Said notice shall also set forth that all parties whose claims are disputed or objected to must appear at said time and place and prove their claims or be debarred from coming in upon the fund for distribution.

Section 49. Expenses to Be Paid Out of Fund.—All assessments, charges, and penalties due to the department by such corporation or person, all ex-

penses of the taking and maintaining possession of the business and property or the continuing of the business by the secretary, and all expenses of liquidation under the provisions of this act, shall first be payable out of the funds of such corporation or person, including the compensation of special deputies, assistants, and others employed by the secretary to assist him in such proceedings; the allowance of all such expenses to be subject to the approval of the court.

Section 50. Distribution of Balance—Liquidating Trustees.—If, after the filing and confirmation of the final account of the secretary and the payment of all creditors in full, and the return to stockholders, who have paid to the secretary the amounts demanded pursuant to section thirty-seven of this act, of their pro rata shares of any such amounts not necessary to pay creditors in full, there shall remain a balance in the hands of the secretary, he shall call a meeting of the stockholders by serving written or printed notice upon them at least thirty days before the day fixed for the meeting.

At such meeting, the stockholders shall elect by ballot a trustee or trustees for the purpose of completing the liquidation. A majority of the stock present in person or by proxy shall be necessary to elect. Should the stockholders fail or refuse to elect, the secretary or any stockholder may petition the court for the appointment of such trustee or trustees, who when appointed, shall give bond to the Commonwealth in such amount, with such surety, and on such conditions, as the court may direct.

When such trustee or trustees have been duly elected or appointed as aforesaid, the secretary shall then transfer, convey, and deliver to such trustee or trustees all the assets of the corporation then remaining his hands. He shall thereupon be discharged from all further liability to such corporation and its creditors, and shall file a certified copy of the proceedings of said stockholders' meeting in his office, and cause a certified copy thereof to be filed in the office of the prothonotary. No powers subject to the supervision of the department shall thereafter be exercised by such corporation, except by permission of the secretary, and after compliance by such corporation with all the requirements of law as to a new corporation desiring to exercise such powers.